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2nd SESSION, 33rd LEGISLATURE, ONTARIO

Government Bill

35 ELIZABETH II, 1986

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Bill 131

An Act to amend the Assessment Act

The Hon. R. Nixon

Minister of Revenue



1st Reading July 10th, 1986
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The purpose of the Bill is,

- (a) to provide that non-profit corporations that engage in commercial activities in competition with business corporations or promote the interests and profits of their members are liable for business tax;
- (b) to exclude all buildings and structures, including buildings and structures that are integrated with machinery and equipment in a manufacturing or farming process, from the exemption from taxation provided for machinery and equipment;
- (c) to establish an exemption from taxation for rides in amusement parks, including any machinery and equipment, rails, supports and trestles and the foundations on which they rest used in their operation; and
- (d) to end the triennial review of pipe line assessments so that the review may be conducted as part of any equalization of assessment in the municipality in which the pipe line is situate.
- **SECTION 1.** A definition of "business" is added to the Act and defines the term so as to include all commercial activities and not limit it to activities earning, or intended to earn, a profit.
- **SECTION 2.—Subsection 1.** The effect of the amendment is to exclude all buildings and structures, including buildings and structures that are integrated with machinery and equipment in a manufacturing or farming process from the exemption from taxation provided for machinery and equipment. Paragraph 17 now reads as follows:
 - 17. All machinery and equipment used for manufacturing or farming purposes or for the purposes of a concentrator or smelter of ore or metals, including the foundations on which they rest, but not including machinery and equipment to the extent that it is used, intended or required for lighting, heating or other building purposes or machinery owned, operated or used by a transportation system or by a person having the right, authority or permission to construct, maintain or operate within Ontario in, under, above, on or through any highway, lane or other public communication, public place or public water, any structure or other thing, for the purposes of a bridge or transportation system, or for the purpose of conducting steam, heat, water, gas, oil, electricity or any property, substance or product capable of transportation, transmission or conveyance for the supply of water, light, heat, power or other service.
- **Subsection 2.** The amendment is complementary to the amendment to paragraph 17, made by subsection (1) of this section, excluding from the exemption in that paragraph all buildings and structures. Paragraph 18 now reads as follows:
 - 18. All machinery and equipment including the foundations on which they rest to the extent and in the proportion used for producing electric power for sale to the general public but not including any other buildings, structures, structural facilities or fixtures used in connection therewith.
- **Subsection 3.** The paragraph added to section 3 of the Act establishes an exemption from taxation for rides in amusement parks, including any machinery and equipment, rails, supports and trestles and the foundations on which they rest used in their operation.
- **SECTION 3.** This section provides authority to the Minister of Municipal Affairs to make grants to compensate municipalities for revenue losses resulting from the exemption from taxation for rides in amusement parks.

SECTION 4. The effect of the re-enactment of subsection 7 (1) of the Act is to provide that non-profit corporations that engage in commercial activities in competition with business corporations, such as credit unions and race tracks, or promote the interests and profits of their members, such as stock and commodity exchanges, are liable for business tax. It also ensures that all land owned and occupied by a business is assessed for business tax at a single rate based on the nature of that business.

Subsection 7 (1) of the Act now reads as follows:

- 7.—(1) Irrespective of any assessment of land under this Act, every person occupying or using land for the purpose of, or in connection with, any business mentioned or described in this section, shall be assessed for a sum to be called "business assessment" to be computed by reference to the assessed value of the land so occupied or used by him as follows:
 - (a) Every person carrying on the business of a distiller for a sum equal to 140 per cent of the assessed value of the land occupied or used by him for such business exclusive of any portion of such land occupied or used by him for the distilling of alcohol solely for industrial purposes and for a sum equal to 75 per cent of the assessed value as to such last-mentioned portion.
 - (b) Every person carrying on the business of a wholesale merchant, brewer, insurance company, loan company, trust company, express company carrying on business on or in connection with a railway or steamboats or other vessels, land company, loaning land corporation, bank, banker or any other financial business for a sum equal to 75 per cent of the assessed value.
 - (c) Every person carrying on the business of selling or distributing goods, wares and merchandise through a chain of more than five retail stores or shops in Ontario, directly or indirectly owned, controlled or operated by him, for a sum equal to 75 per cent of the assessed value of the land occupied or used by him in such business for a distribution premises, storage or warehouse for such goods, wares and merchandise, or for an office used in connection with such business.
 - (d) Every person carrying on the business of a manufacturer, including the business of a flour miller, maltster, a concentrator or smelter of ore or metals, and the business of obtaining minerals from the ground, for a sum equal to 60 per cent of the assessed value, provided that a manufacturer is not liable to business assessment as a wholesale merchant by reason of his carrying on the business of selling by wholesale the goods of his own manufacture on such land.
 - (e) Every person carrying on the business of selling goods or services through a chain of more than five stores, shops or outlets in Ontario, except a hotel or motel, for a sum equal to 50 per cent of the assessed value.

(f) Every person,

- (i) practising or carrying on the business of a barrister, solicitor, notary public, conveyancer, physician, surgeon, oculist, optometrist, ophthalmic dispenser, physiotherapist, podiatrist, aurist, dentist or veterinarian, or a civil, mining, consulting, mechanical or electrical engineer, surveyor, contractor, builder, advertising agent, private investigator, employment agent, accountant, assignee, auditor, osteopath, chiropractor, massagist, architect and every person carrying on a financial or commercial business or any other business as agent, or
- (ii) carrying on the business of operating a radio or television broadcasting station, or
- (iii) carrying on business as the publisher of a newspaper, or a photographer, lithographer, printer or publisher, or

(iv) carrying on the business of a department store,

for a sum equal to 50 per cent of the assessed value.

- (g) Every person carrying on the business of,
 - (i) a telegraph or telephone company, or
 - (ii) a transportation system, other than one for the transportation or transmission or distribution by pipe line of crude oil or liquid or gaseous hydrocarbons or any product or by-product thereof or natural or manufactured gas or liquefied petroleum gas or any mixture or combination of the foregoing, or
 - (iii) the transmission of water or of steam, heat or electricity for the purposes of light, heat or power,

for a sum equal to 30 per cent of the assessed value of the land, except a highway, lane or other public communication or public place or water or private right of way, occupied or used by such person, exclusive of the value of any machinery, plant or appliances erected or placed upon, in, over, under or affixed to such land.

- (h) Every person carrying on the business of transportation, transmitting or distributing by pipe line crude oil or liquid or gaseous hydrocarbons or any product or by-product thereof or natural or manufactured gas or liquefied petroleum gas or any mixture or combination of the foregoing, for a sum equal to 30 per cent of the assessed value of the land excluding any pipe line liable to assessment under section 23 or 24.
- (i) Every person carrying on the business of a car park, for a sum equal to 25 per cent of the assessed value.
- (j) Every person carrying on any business not specially mentioned before in this section, for a sum equal to 30 per cent of the assessed value.

SECTION 5. This section ends the triennial review of pipe line assessments so that the review may be conducted as part of any equalization of assessment in the municipality in which the pipe line is situate.

Subsection 24 (17) now reads as follows:

(17) Any rates and percentages of rates prescribed under subsection (16) shall be reviewed by the Minister in the year 1980 and in every third year thereafter, and in any such year the Lieutenant Governor in Council may by regulation prescribe different rates and percentages of rates to be applicable for the purposes of this Act.

Bill 131

An Act to amend the Assessment Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Section 1 of the Assessment Act, being chapter 31 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1982, chapter 40, section 3, is further amended by adding thereto the following clause:
 - (ca) "business" includes any business activity whether or not such activity produces, or is intended to produce, a profit.
- 2.—(1) Paragraph 17 of section 3 of the said Act is amended by adding thereto the following clause:
 - The exemption from taxation under this paragraph does not apply to a building or structure or any part of a building or structure, notwithstanding that it forms an integral part of manufacturing or farming machinery or equipment, or of a manufacturing process or farming operation.
- (2) Paragraph 18 of the said section 3 is amended by striking out "other" in the fifth line.
- (3) Section 3 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 28, section 2, is further amended by adding thereto the following paragraph:
- 23. Roller-coasters, monorails, slides, ferris wheels, Amusement merry-go-rounds or other similar mechanical amusement devices on which a person rides, including any machinery, equipment, rails, supports and trestles used for their operation and the foundations on which they rest, erected or placed upon, in, over, under or affixed to land occupied by the operator of an amusement park.

Grants by Minister of Municipal Affairs

- 3. In each of the years 1987, 1988 and 1989, the Minister of Municipal Affairs may make grants, upon such terms and conditions as the Minister considers necessary, to any municipality to compensate the municipality for a loss of tax revenue resulting from the exemption conferred by paragraph 23 of section 3 of the Assessment Act, as enacted by subsection 2 (3) of this Act.
- **4.** Subsection 7 (1) of the said Act is repealed and the following substituted therefor:

Business assessment

- (1) Irrespective of any assessment of land under this Act, every person occupying or using land for the purpose of, or in connection with, any business mentioned or described in this section, shall be assessed for a sum to be called "business assessment" to be computed by reference to the assessed value of the land so occupied or used by that person as follows:
 - (a) The business of a distiller for a sum equal to 140 per cent of the assessed value of the land so occupied or used, exclusive of any portion of the land occupied or used for the distilling of alcohol solely for industrial purposes and for a sum equal to 75 per cent of the assessed value as to such last-mentioned portion.
 - (b) The business of a wholesale merchant, brewer, insurance company, loan company, trust company, express company carrying on business on or in connection with a railway or steamboats or other vessels, land company, loaning land corporation, bank, banker, credit union, caisse populaire, stock exchange, commodity exchange or any other financial business, for a sum equal to 75 per cent of the assessed value of the land so occupied or used.
 - (c) The business of selling or distributing goods, wares and merchandise through a chain of more than five retail stores or shops in Ontario, directly or indirectly owned, controlled or operated by the seller or distributor, for a sum equal to 75 per cent of the assessed value of the land occupied or used in such business for a distribution premises, storage or warehouse for such goods, wares and merchandise, or for an office used in connection with such business.
 - (d) The business of a manufacturer, including the business of a flour miller, maltster, a concentrator or

smelter of ore or metals, and the business of obtaining minerals from the ground, for a sum equal to 60 per cent of the assessed value of the land so occupied or used, provided that a manufacturer is not liable to business assessment as a wholesale merchant by reason of selling by wholesale the goods that manufacturer manufactures on such land.

3

- (e) The business of a department store or the business of selling goods or services through a chain of more than five stores, shops or outlets in Ontario, except a hotel or motel, for a sum equal to 50 per cent of the assessed value of the land so occupied or used.
- (f) The business of,
 - (i) a barrister, solicitor, notary public, conveyancer, physician, surgeon, oculist, optometrist, ophthalmic dispenser, physiotherapist, podiatrist, aurist, dentist or veterinarian, or a civil, mining, consulting, mechanical or electrical engineer, surveyor, contractor, builder, advertising agent, private investigator, employment agent, accountant, assignee, auditor, osteopath, chiropractor, massagist, architect or any person carrying on business as an agent, or
 - (ii) operating a radio or television broadcasting station, or
 - (iii) publishing a newspaper, or a photographer, lithographer, printer or publisher,

for a sum equal to 50 per cent of the assessed value of the land so occupied or used.

- (g) The business of,
 - (i) a telegraph or telephone company, or
 - (ii) a transportation system, other than one for the transportation or transmission or distribution by pipe line of crude oil or liquid or gaseous hydrocarbons or any product or by-product thereof or natural or manufactured gas or liquefied petroleum gas or any mixture or combination of the foregoing, or

(iii) the transmission of water or of steam, heat or electricity for the purposes of light, heat or power,

for a sum equal to 30 per cent of the assessed value of the land so occupied or used, except a highway, lane or other public communication or public place or water or private right of way, occupied or used by such person, exclusive of the value of any machinery, plant or appliances erected or placed upon, in, over, under or affixed to such land.

- (h) The business of transportation, transmitting or distributing by pipe line crude oil or liquid or gaseous hydrocarbons or any product or by-product thereof or natural or manufactured gas or liquefied petroleum gas or any mixture or combination of the foregoing, for a sum equal to 30 per cent of the assessed value of the land so occupied or used excluding any pipe line liable to assessment under section 23 or 24.
- (i) The business of a race track, for a sum equal to 30 per cent of the assessed value of the land so occupied or used.
- (j) The business of a car park, for a sum equal to 25 per cent of the assessed value of the land so occupied or used.
- (k) Any business not specially mentioned before in this section, for a sum equal to 30 per cent of the assessed value of the land so occupied or used.

5. Subsection 24 (17) of the said Act is repealed and the following substituted therefor:

Review of rates under subs. (16)

- (17) Where a general reassessment is made of all real property in any municipality or in territory without municipal organization comprised in a locality, the Minister shall review any rates or percentages of rates prescribed under subsection (16) and the Minister may by regulation,
 - (a) prescribe rates in lieu of the rates in subsection (16) to be applied for the taxation of pipe lines; and
 - (b) where two or more pipe lines occupy the same right of way, designate the second and subsequent pipe lines and prescribe the percentage of the rates as so

prescribed at which the second and subsequent pipe lines are assessable and taxable,

and the rates and percentages of rates as so prescribed shall apply in the year in which taxation is first levied on the basis of the new values resulting from such reassessment and in each year thereafter until such rates and percentages of rates are again altered in accordance with this subsection.

6. This Act comes into force on the day it receives Royal Assent, and applies in respect of every assessment for taxation application in the year 1987 and subsequent years.

7. The short title of this Act is the Assessment Amendment Short title Act, 1986.







2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 131

An Act to amend the Assessment Act

The Hon. R. Nixon *Minister of Revenue*

1st Reading

2nd Reading

3rd Reading

Royal Assent

July 10th, 1986

November 4th, 1986

nt Committee)

(Reprinted as amended by the General Government Committee)

EXPLANATORY NOTES

The purpose of the Bill is,

- (a) to provide that credit unions, caisses populaires, stock exchanges, commodity
 exchanges and race tracks are liable for business tax, regardless of the fact they
 may not produce, or be intended to produce, a profit;
- (b) to establish an exemption from taxation for rides in amusement parks, including any machinery and equipment, rails, supports and trestles and the foundations on which they rest used in their operation; and
- (c) to end the triennial review of pipe line assessments so that the review may be conducted as part of any equalization of assessment in the municipality in which the pipe line is situate.

SECTION 1.—Subsection 1. The amendment is intended to dispel a possible ambiguity. Paragraph 18 now reads as follows:

- 18. All machinery and equipment including the foundations on which they rest to the extent and in the proportion used for producing electric power for sale to the general public but not including any other buildings, structures, structural facilities or fixtures used in connection therewith.
- Subsection 2. The paragraph added to section 3 of the Act establishes an exemption from taxation for rides in amusement parks, including any machinery and equipment, rails, supports and trestles and the foundations on which they rest used in their operation.
- **SECTION 2.** This section provides authority to the Minister of Municipal Affairs to make grants to compensate municipalities for revenue losses resulting from the exemption from taxation for rides in amusement parks.

SECTION 3.—Subsection 1. The re-enactment of subsection 7 (1) of the Act makes it explicit that a person occupying or using land for the purpose of carrying on the business of a credit union, caisse populaire, stock exchange, commodity exchange or race track is to be assessed for business assessment; credit unions and caisses populaires will be assessed for a sum equal to 75 per cent of the assessed value of the land so occupied or used, stock exchanges and commodity exchanges will be assessed at 50 per cent and race tracks at 30 per cent of the assessed value of the land.

Subsection 7 (1) of the Act now reads as follows:

- 7.—(1) Irrespective of any assessment of land under this Act, every person occupying or using land for the purpose of, or in connection with, any business mentioned or described in this section, shall be assessed for a sum to be called "business assessment" to be computed by reference to the assessed value of the land so occupied or used by him as follows:
 - (a) Every person carrying on the business of a distiller for a sum equal to 140 per cent of the assessed value of the land occupied or used by him for such business exclusive of any portion of such land occupied or used by him for the distilling of alcohol solely for industrial purposes and for a sum equal to 75 per cent of the assessed value as to such last-mentioned portion.
 - (b) Every person carrying on the business of a wholesale merchant, brewer, insurance company, loan company, trust company, express company carrying on business on or in connection with a railway or steamboats or other vessels, land company, loaning land corporation, bank, banker or any other financial business for a sum equal to 75 per cent of the assessed value.

- (c) Every person carrying on the business of selling or distributing goods, wares and merchandise through a chain of more than five retail stores or shops in Ontario, directly or indirectly owned, controlled or operated by him, for a sum equal to 75 per cent of the assessed value of the land occupied or used by him in such business for a distribution premises, storage or warehouse for such goods, wares and merchandise, or for an office used in connection with such business.
- (d) Every person carrying on the business of a manufacturer, including the business of a flour miller, maltster, a concentrator or smelter of ore or metals, and the business of obtaining minerals from the ground, for a sum equal to 60 per cent of the assessed value, provided that a manufacturer is not liable to business assessment as a wholesale merchant by reason of his carrying on the business of selling by wholesale the goods of his own manufacture on such land.
- (e) Every person carrying on the business of selling goods or services through a chain of more than five stores, shops or outlets in Ontario, except a hotel or motel, for a sum equal to 50 per cent of the assessed value.
- (f) Every person,
 - (i) practising or carrying on the business of a barrister, solicitor, notary public, conveyancer, physician, surgeon, oculist, optometrist, ophthalmic dispenser, physiotherapist, podiatrist, aurist, dentist or veterinarian, or a civil, mining, consulting, mechanical or electrical engineer, surveyor, contractor, builder, advertising agent, private investigator, employment agent, accountant, assignee, auditor, osteopath, chiropractor, massagist, architect and every person carrying on a financial or commercial business or any other business as agent, or
 - (ii) carrying on the business of operating a radio or television broadcasting station, or
 - (iii) carrying on business as the publisher of a newspaper, or a photographer, lithographer, printer or publisher, or
 - (iv) carrying on the business of a department store,

for a sum equal to 50 per cent of the assessed value.

- (g) Every person carrying on the business of,
 - (i) a telegraph or telephone company, or
 - (ii) a transportation system, other than one for the transportation or transmission or distribution by pipe line of crude oil or liquid or gaseous hydrocarbons or any product or by-product thereof or natural or manufactured gas or liquefied petroleum gas or any mixture or combination of the foregoing, or
 - (iii) the transmission of water or of steam, heat or electricity for the purposes of light, heat or power,

for a sum equal to 30 per cent of the assessed value of the land, except a highway, lane or other public communication or public place or water or private right of way, occupied or used by such person, exclusive of the value of any machinery, plant or appliances erected or placed upon, in, over, under or affixed to such land.

(h) Every person carrying on the business of transportation, transmitting or distributing by pipe line crude oil or liquid or gaseous hydrocarbons or any product or

by-product thereof or natural or manufactured gas or liquefied petroleum gas or any mixture or combination of the foregoing, for a sum equal to 30 per cent of the assessed value of the land excluding any pipe line liable to assessment under section 23 or 24.

- (i) Every person carrying on the business of a car park, for a sum equal to 25 per cent of the assessed value.
- (j) Every person carrying on any business not specially mentioned before in this section, for a sum equal to 30 per cent of the assessed value.
- **Subsection 2.** New subsection 7 (1a) makes those five businesses liable for business assessment notwithstanding they may not produce, or be intended to produce, a profit.
- **SECTION 4.** This section ends the triennial review of pipe line assessments so that the review may be conducted as part of any equalization of assessment in the municipality in which the pipe line is situate.

Subsection 24 (17) now reads as follows:

(17) Any rates and percentages of rates prescribed under subsection (16) shall be reviewed by the Minister in the year 1980 and in every third year thereafter, and in any such year the Lieutenant Governor in Council may by regulation prescribe different rates and percentages of rates to be applicable for the purposes of this Act.

Bill 131 1986

An Act to amend the Assessment Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Paragraph 18 of section 3 of the Assessment Act, being chapter 31 of the Revised Statutes of Ontario, 1980, is amended by striking out "other" in the fifth line.
- (2) Section 3 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 28, section 2, is further amended by adding thereto the following paragraph:
 - 23. Roller-coasters, monorails, slides, ferris wheels, Amusement merry-go-rounds or other similar mechanical amusement devices on which a person rides, including any machinery, equipment, rails, supports and trestles used for their operation and the foundations on which they rest, erected or placed upon, in, over, under or affixed to land occupied by the operator of an amusement park.

2. In each of the years 1987, 1988 and 1989, the Minister of Grants by Municipal Affairs may make grants, upon such terms and conditions as the Minister considers necessary, to any municipality to compensate the municipality for a loss of tax revenue resulting from the exemption conferred by paragraph 23 of section 3 of the Assessment Act, as enacted by subsection 1 (2) of this Act.

Minister of

- 3.—(1) Subsection 7 (1) of the said Act is repealed and the following substituted therefor:
- (1) Irrespective of any assessment of land under this Act, Business every person occupying or using land for the purpose of, or in connection with, any business mentioned or described in this section, shall be assessed for a sum to be called "business assessment" to be computed by reference to the assessed value of the land so occupied or used by that person as follows:

- (a) The business of a distiller for a sum equal to 140 per cent of the assessed value of the land so occupied or used, exclusive of any portion of the land occupied or used for the distilling of alcohol solely for industrial purposes and for a sum equal to 75 per cent of the assessed value as to such last-mentioned portion.
- (b) The business of a wholesale merchant, brewer, insurance company, loan company, trust company, express company carrying on business on or in connection with a railway or steamboats or other vessels, land company, loaning land corporation, bank, banker, credit union, caisse populaire or any other financial business, for a sum equal to 75 per cent of the assessed value of the land so occupied or used.
- (c) The business of selling or distributing goods, wares and merchandise through a chain of more than five retail stores or shops in Ontario, directly or indirectly owned, controlled or operated by the seller or distributor, for a sum equal to 75 per cent of the assessed value of the land occupied or used in such business for a distribution premises, storage or warehouse for such goods, wares and merchandise, or for an office used in connection with such business.
- (d) The business of a manufacturer, including the business of a flour miller, maltster, a concentrator or smelter of ore or metals, and the business of obtaining minerals from the ground, for a sum equal to 60 per cent of the assessed value of the land so occupied or used, provided that a manufacturer is not liable to business assessment as a wholesale merchant by reason of selling by wholesale the goods that manufacturer manufactures on such land.
- (e) The business of a department store or the business of selling goods or services through a chain of more than five stores, shops or outlets in Ontario, except a hotel or motel, for a sum equal to 50 per cent of the assessed value of the land so occupied or used.
- (f) The business of,
 - (i) a barrister, solicitor, notary public, conveyancer, physician, surgeon, oculist, optometrist, ophthalmic dispenser, physiotherapist,

podiatrist, aurist, dentist or veterinarian, or a civil, mining, consulting, mechanical or electrical engineer, surveyor, contractor, builder, advertising agent, private investigator, employment agent, accountant, assignee, auditor, osteopath, chiropractor, massagist, architect or any person carrying on business as an agent, or

- (ii) operating a radio or television broadcasting station, or
- (iii) publishing a newspaper, or a photographer, lithographer, printer or publisher, or
- (iv) operating a stock exchange or commodity exchange,

for a sum equal to 50 per cent of the assessed value of the land so occupied or used.

- (g) The business of,
 - (i) a telegraph or telephone company, or
 - (ii) a transportation system, other than one for the transportation or transmission or distribution by pipe line of crude oil or liquid or gaseous hydrocarbons or any product or by-product thereof or natural or manufactured gas or liquefied petroleum gas or any mixture or combination of the foregoing, or
 - (iii) the transmission of water or of steam, heat or electricity for the purposes of light, heat or power,

for a sum equal to 30 per cent of the assessed value of the land so occupied or used, except a highway, lane or other public communication or public place or water or private right of way, occupied or used by such person, exclusive of the value of any machinery, plant or appliances erected or placed upon, in, over, under or affixed to such land.

(h) The business of transportation, transmitting or distributing by pipe line crude oil or liquid or gaseous hydrocarbons or any product or by-product thereof or natural or manufactured gas or liquefied petroleum gas or any mixture or combination of the fore-

going, for a sum equal to 30 per cent of the assessed value of the land so occupied or used excluding any pipe line liable to assessment under section 23 or 24.

- (i) The business of a race track, for a sum equal to 30 per cent of the assessed value of the land so occupied or used.
- (j) The business of a car park, for a sum equal to 25 per cent of the assessed value of the land so occupied or used.
- (k) Any business not specially mentioned before in this section, for a sum equal to 30 per cent of the assessed value of the land so occupied or used.

(2) Section 7 of the said Act is amended by adding thereto the following subsection:

Profit

- (1a) Notwithstanding that the activity of carrying on the business of a credit union, caisse populaire, stock exchange, commodity exchange or race track may not produce, or be intended to produce, a profit, every person occupying or using land for the purpose of or in connection with any of those business activities shall be assessed for a sum to be called "business assessment" computed in the manner set out in subsection (1) in respect of that business.
- **4.** Subsection 24 (17) of the said Act is repealed and the following substituted therefor:

Review of rates under subs. (16)

- (17) Where a general reassessment is made of all real property in any municipality or in territory without municipal organization comprised in a locality, the Minister shall review any rates or percentages of rates prescribed under subsection (16) and the Minister may by regulation,
 - (a) prescribe rates in lieu of the rates in subsection (16) to be applied for the taxation of pipe lines; and
 - (b) where two or more pipe lines occupy the same right of way, designate the second and subsequent pipe lines and prescribe the percentage of the rates as so prescribed at which the second and subsequent pipe lines are assessable and taxable,

and the rates and percentages of rates as so prescribed shall apply in the year in which taxation is first levied on the basis of the new values resulting from such reassessment and in each year thereafter until such rates and percentages of rates are again altered in accordance with this subsection.

5. This Act comes into force on the day it receives Royal Assent, and applies in respect of every assessment for taxation application in the year 1987 and subsequent years.

6. The short title of this Act is the Assessment Amendment Short title Act. 1986.







Bill 131

(Chapter 69 Statutes of Ontario, 1986)

An Act to amend the Assessment Act

The Hon. R. Nixon

Minister of Revenue



1st Reading July 10th, 1986

2nd Reading November 4th, 1986

3rd Reading December 15th, 1986

Royal Assent December 18th, 1986



Bill 131 1986

An Act to amend the Assessment Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Paragraph 18 of section 3 of the Assessment Act. being chapter 31 of the Revised Statutes of Ontario, 1980, is amended by striking out "other" in the fifth line.
- (2) Section 3 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 28, section 2, is further amended by adding thereto the following paragraph:
 - 23. Roller-coasters, monorails, slides, ferris wheels, Amusement merry-go-rounds or other similar mechanical amusement devices on which a person rides, including any machinery, equipment, rails, supports and trestles used for their operation and the foundations on which they rest, erected or placed upon, in, over, under or affixed to land occupied by the operator of an amusement park.

2. In each of the years 1987, 1988 and 1989, the Minister of Grants by Municipal Affairs may make grants, upon such terms and conditions as the Minister considers necessary, to any municipality Affairs to compensate the municipality for a loss of tax revenue resulting from the exemption conferred by paragraph 23 of section 3 of the Assessment Act, as enacted by subsection 1 (2) of this Act.

Minister of

- 3.—(1) Subsection 7 (1) of the said Act is repealed and the following substituted therefor:
- (1) Irrespective of any assessment of land under this Act, every person occupying or using land for the purpose of, or in connection with, any business mentioned or described in this section, shall be assessed for a sum to be called "business assessment" to be computed by reference to the assessed value of the land so occupied or used by that person as follows:

Business assessment

- (a) The business of a distiller for a sum equal to 140 per cent of the assessed value of the land so occupied or used, exclusive of any portion of the land occupied or used for the distilling of alcohol solely for industrial purposes and for a sum equal to 75 per cent of the assessed value as to such last-mentioned portion.
- (b) The business of a wholesale merchant, brewer, insurance company, loan company, trust company, express company carrying on business on or in connection with a railway or steamboats or other vessels, land company, loaning land corporation, bank, banker, credit union, caisse populaire or any other financial business, for a sum equal to 75 per cent of the assessed value of the land so occupied or used.
- (c) The business of selling or distributing goods, wares and merchandise through a chain of more than five retail stores or shops in Ontario, directly or indirectly owned, controlled or operated by the seller or distributor, for a sum equal to 75 per cent of the assessed value of the land occupied or used in such business for a distribution premises, storage or warehouse for such goods, wares and merchandise, or for an office used in connection with such business.
- (d) The business of a manufacturer, including the business of a flour miller, maltster, a concentrator or smelter of ore or metals, and the business of obtaining minerals from the ground, for a sum equal to 60 per cent of the assessed value of the land so occupied or used, provided that a manufacturer is not liable to business assessment as a wholesale merchant by reason of selling by wholesale the goods that manufacturer manufactures on such land.
- (e) The business of a department store or the business of selling goods or services through a chain of more than five stores, shops or outlets in Ontario, except a hotel or motel, for a sum equal to 50 per cent of the assessed value of the land so occupied or used.
- (f) The business of,
 - (i) a barrister, solicitor, notary public, conveyancer, physician, surgeon, oculist, optometrist, ophthalmic dispenser, physiotherapist,

podiatrist, aurist, dentist or veterinarian, or a civil, mining, consulting, mechanical or electrical engineer, surveyor, contractor, builder, advertising agent, private investigator, employment agent, accountant, assignee, auditor, osteopath, chiropractor, massagist, architect or any person carrying on business as an agent, or

- (ii) operating a radio or television broadcasting station, or
- (iii) publishing a newspaper, or a photographer, lithographer, printer or publisher, or
- (iv) operating a stock exchange or commodity exchange,

for a sum equal to 50 per cent of the assessed value of the land so occupied or used.

- (g) The business of,
 - (i) a telegraph or telephone company, or
 - (ii) a transportation system, other than one for the transportation or transmission or distribution by pipe line of crude oil or liquid or gaseous hydrocarbons or any product or by-product thereof or natural or manufactured gas or liquefied petroleum gas or any mixture or combination of the foregoing, or
 - (iii) the transmission of water or of steam, heat or electricity for the purposes of light, heat or power,

for a sum equal to 30 per cent of the assessed value of the land so occupied or used, except a highway, lane or other public communication or public place or water or private right of way, occupied or used by such person, exclusive of the value of any machinery, plant or appliances erected or placed upon, in, over, under or affixed to such land.

The business of transportation, transmitting or dis-(h) tributing by pipe line crude oil or liquid or gaseous hydrocarbons or any product or by-product thereof or natural or manufactured gas or liquefied petroleum gas or any mixture or combination of the foregoing, for a sum equal to 30 per cent of the assessed value of the land so occupied or used excluding any pipe line liable to assessment under section 23 or 24.

- (i) The business of a race track, for a sum equal to 30 per cent of the assessed value of the land so occupied or used.
- (j) The business of a car park, for a sum equal to 25 per cent of the assessed value of the land so occupied or used.
- (k) Any business not specially mentioned before in this section, for a sum equal to 30 per cent of the assessed value of the land so occupied or used.
- (2) Section 7 of the said Act is amended by adding thereto the following subsection:

Profit

- (1a) Notwithstanding that the activity of carrying on the business of a credit union, caisse populaire, stock exchange, commodity exchange or race track may not produce, or be intended to produce, a profit, every person occupying or using land for the purpose of or in connection with any of those business activities shall be assessed for a sum to be called "business assessment" computed in the manner set out in subsection (1) in respect of that business.
- **4.** Subsection 24 (17) of the said Act is repealed and the following substituted therefor:

Review of rates under subs. (16)

- (17) Where a general reassessment is made of all real property in any municipality or in territory without municipal organization comprised in a locality, the Minister shall review any rates or percentages of rates prescribed under subsection (16) and the Minister may by regulation,
 - (a) prescribe rates in lieu of the rates in subsection (16) to be applied for the taxation of pipe lines; and
 - (b) where two or more pipe lines occupy the same right of way, designate the second and subsequent pipe lines and prescribe the percentage of the rates as so prescribed at which the second and subsequent pipe lines are assessable and taxable,

and the rates and percentages of rates as so prescribed shall apply in the year in which taxation is first levied on the basis of the new values resulting from such reassessment and in each year thereafter until such rates and percentages of rates are again altered in accordance with this subsection.

5. This Act comes into force on the day it receives Royal Assent, and applies in respect of every assessment for taxation application in the year 1987 and subsequent years.

6. The short title of this Act is the Assessment Amendment Short title Act, 1986.



35 ELIZABETH II, 1986

A20N (B B56

Bill 132

An Act to amend the Labour Relations Act

Mr. Mackenzie



1st Reading 2nd Reading 3rd Reading

Royal Assent

July 10th, 1986

The purpose of the Bill is to protect the jobs and rights of employees,

- (a) where work previously done by those employees at an establishment is contracted to another employer;
- (b) where work done at an establishment by employees of a contractor is contracted back to the owner of the establishment; or
- (c) where one contractor is replaced by another.

Bill 132 1986

An Act to amend the Labour Relations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. The Labour Relations Act, being chapter 228 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following sections:
- 63a. Where a person contracts with an employer for the Contracting employer to provide work or services to, at or out of an establishment of the person where similar work or services has pre- an establishviously been performed by,

- employees of the person covered by a collective agreement, the employer is bound by the collective agreement as if the employer had been a party thereto:
- (b) employees covered by an application for certification or termination, the employer is the employer for the purpose of the application as if the employer were named as the employer in the application; and
- employees in a bargaining unit for which a trade union has been certified, or has given or is entitled to give notice under section 14 or 53, the trade union continues to be a bargaining agent and is entitled to give the employer written notice of its desire to bargain with a view to making a collective agreement or the renewal, with or without modification, of the agreement then in operation and such notice has the same effect as a notice under section 14 or 53.
- **63b.**—(1) Where a contract for work or services to, at or Transfer of out of an establishment entered into with an employer whose transfer of employees are covered by a collective agreement is terminated collective or expires and such work or services are subsequently performed under the direction of any other employer, whether

agreement

pursuant to a contract with any person or otherwise, the subsequent employer is bound by the collective agreement as if it were a party thereto.

Idem, transfer of application for certification or termination (2) Where a contract for work or services to, at or out of an establishment entered into with an employer whose employees are covered by an application for certification or termination is terminated or expires and such work or services are subsequently performed under the direction of any other employer, whether pursuant to a contract with any person or otherwise, the subsequent employer is the employer for the purposes of the application as if it were named as the employer in the application.

Idem, continuation of bargaining agent (3) Where a contract for work or services to, at or out of an establishment entered into with an employer whose employees are in a bargaining unit for which a trade union has been certified or has given or is entitled to give notice under section 14 or 53 is terminated or expires and such work or services are subsequently performed under the direction of any other employer, whether pursuant to a contract with any person or otherwise, the trade union continues to be a bargaining agent for the employees and is entitled to give to the subsequent employer written notice of its desire to bargain with the view to making a collective agreement or the renewal, with or without modification, of the agreement then in operation and such notice has the same effect as a notice under section 14 or 53.

Board may treat two employers as one **63c.** The Board may, upon application, treat any employers or persons described under section 63a or 63b as one employer for the purposes of this Act and grant such relief by way of declaration or otherwise as it considers appropriate.

Conflict

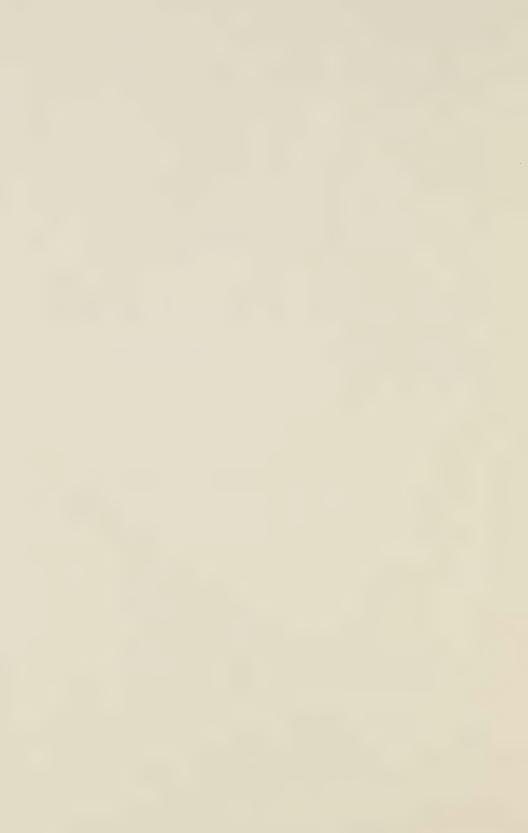
63d.—(1) Where any person, trade union or council of trade unions claims that by virtue of section 63a or 63b a conflict exists between bargaining rights of trade unions or council of trade unions representing employees of any of the employers described, the Board may, upon application of any employer, trade union or council of trade unions concerned amend, to such extent as the Board considers necessary, any bargaining unit in any certificate issued to any trade union or any bargaining unit defined in any collective agreement.

Intermingling of employees (2) Where any person, trade union or council of trade unions claims by virtue of section 63a or 63b that an employer has intermingled the employees of one employer with those of another employer, the Board may, upon application of any person, trade union or council of trade unions concerned,

- (a) declare that the subsequent employer is no longer bound by the collective agreement;
- (b) determine whether the employees concerned constitute one or more appropriate bargaining units;
- (c) declare which trade union, trade unions or council of trade unions, if any, shall be the bargaining agent or agents for the employees in such unit or units; and
- (d) amend, to such extent as the Board considers necessary, any certificate issued to any trade union or council of trade unions or any bargaining unit defined in any collective agreement.
- 2. This Act comes into force on the day it receives Royal Commence-Assent.
- 3. The short title of this Act is the Labour Relations Amend-Short title ment Act. 1986.







2nd SESSION, 33rd LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 133

An Act to amend the Liquor Control Act

Mr. Shymko



1st Reading
2nd Reading

October 15th, 1986

3rd Reading
Royal Assent

The purpose of the Bill is to allow the Liquor Control Board of Ontario to prohibit manufacturers from selling a product unless the chemical ingredients are set out on the label of the product in the manner established by the Board.

Bill 133 1986

An Act to amend the Liquor Control Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- **1.** Section 3 of the *Liquor Control Act*, being chapter 243 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:
 - (o) to prohibit manufacturers from selling a product unless all of the chemical ingredients contained in the product, including fungicides, pesticides, metals, synthetic dyes, organic and non-organic acids, are identified and listed on the labels of the product in such measurements as are set out in the Board guidelines regarding the composition of beer, liquor, spirits and wine.
- 2. This Act comes into force on the day it receives Royal Commence-Assent.
- 3. The short title of this Act is the Liquor Control Amend-Short title ment Act, 1986.



35 ELIZABETH II, 1986

Bill 134

An Act to amend the Liquor Licence Act

The Hon. M. Kwinter

Minister of Consumer and Commercial Relations



1st Reading

October 16th, 1986

2nd Reading

3rd Reading

Royal Assent

Section 4 of the Act currently prohibits the sale of liquor except under the authority of a licence or permit. Section 5 of the Act permits licences to be issued to manufacturers of spirits, beer and wine who sell to the Liquor Control Board of Ontario.

SECTION 1. The proposed section 4a introduces licences to be given to retail food store owners permitting the sale of beer and wine. A waiting period is provided for to allow municipalities to refuse to be affected by the provision. Two methods of refusing are provided in the proposed subsection 4a(3). The provision does not apply in a dry area.

SECTIONS 2 and 3. The changes are to change internal references and are necessary because of the new section 4a of the Act.

SECTION 4. Section 39 of the Act sets out the power to make regulations. The changes are complementary to section 1 of the Bill.

SECTION 5. Minimum prices of beer or wine sold under these new licences will be fixed by the Liquor Control Board of Ontario.

Bill 134 1986

An Act to amend the Liquor Licence Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. The Liquor Licence Act, being chapter 244 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:
- **4a.**—(1) The Board may issue a licence authorizing the Retail store's owner of a retail food store, as defined in the regulations, to keep for sale, offer for sale and sell beer and wine.

licence to sell

(2) Subsection (1) does not apply until the expiration, after Waiting this section comes into force, of three months or such longer period as is prescribed by the regulations.

(3) Subsection (1) does not apply in municipalities where Municipal the council has, within the period referred to in subsection refuse (2),

- passed a resolution to the effect that no licences are to be issued under subsection (1) in respect of stores in that municipality and so advised the Board; or
- (b) advised the Board that the council proposes to submit, under section 26, the question of permitting owners of retail food stores to hold licences issued under subsection (1).
- (4) Where clause (3) (b) applies, licences may be issued Reference under subsection (1) in the municipality concerned only after section 26 the question of whether owners of retail food stores should be permitted to obtain licences under subsection (1) has been submitted under section 26 and received an affirmative vote of 60 per cent of the electors voting on the question.

(5) Any licence issued under this section may be issued sub- Conditions ject to such terms and conditions as are set out in the licence or prescribed by the regulations.

Retail food store (6) For a store to be considered a retail food store for the purpose of this section, at least 51 per cent of the sales, by value, must be of food items that are exempt from retail sales tax.

Dry area exemption

(7) Subject to sections 26 and 27 and the regulations, subsection (1) does not apply in a municipality or such part thereof in which the sale of liquor is prohibited when this section comes into force.

Exception to section 6

(8) Clause 6 (1) (g) and subsections 6 (3) and (4) do not apply where the application is for a licence under this section.

Exception to section 25

- (9) Section 25 does not apply to a licence issued under this section.
- 2. Subsection 7 (1) of the said Act is amended by striking out "section 4 or 5" in the first line and inserting in lieu thereof "this Act".
- 3.—(1) Subsection 10 (1) of the said Act is amended by striking out "under section 6" in the second line and inserting in lieu thereof "other than one referred to in section 5".
- (2) Subsection 10 (3) of the said Act is amended by striking out "issued under section 6" in the second and third lines and inserting in lieu thereof "other than one referred to in section 5".
- **4.**—(1) Clause 39 (p) of the said Act is amended by inserting after "serving" in the fifth line "or sale".
- (2) Section 39 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 66, Schedule and 1984, chapter 4, section 7, is further amended by adding thereto the following clauses:
 - (zb) providing for a system of cash deposits for beer containers and requiring holders of retail food store licences to accept returns of the containers in accordance with the prescribed system;
 - (zc) defining a "retail food store";
 - (zd) prescribing persons or classes of persons who are not entitled to be granted a licence for a retail food store on the basis of the number of stores that they own or operate;

- 3
- (ze) prescribing a longer period for the purposes of subsection 4a(2).
- 5. The said Act is further amended by adding thereto the following section:
- **46a.** No holder of a licence issued under section 4a shall where price sell or offer for sale beer or wine at a price lower than the one fixed by the Liquor Control Board of Ontario.
- **6.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.
- 7. The short title of this Act is the Liquor Licence Amend-Short title ment Act, 1986.







Governme

35 ELIZABETH II, 1986

Bill 135

An Act to amend the Liquor Control Act

The Hon. M. Kwinter

Minister of Consumer and Commercial Relations



1st Reading
2nd Reading

3rd Reading

Royal Assent

October 16th, 1986

This Bill is complementary to the *Liquor Licence Amendment Act, 1986*. Section 3 of the Act sets out the powers of the Board. The clause being added sets out an additional power.

Bill 135 1986

An Act to amend the Liquor Control Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Section 3 of the Liquor Control Act, being chapter 243 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:
 - (ha) to determine classes, varieties and brands, and nature, form and capacity of packages of beer and wine that may be kept for sale at retail food stores as defined for the purposes of the Liquor Licence R.S.O. 1980, Act.

2. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commence-

3. The short title of this Act is the Liquor Control Amend- Short title ment Act, 1986.



35 ELIZABETH II, 1986

Bill 136

An Act to amend the Legislative Assembly Act

Mr. Sterling



1st Reading

October 16th, 1986

2nd Reading3rd Reading

Royal Assent

The purpose of this Bill is to establish "M.P.P." as the official designation of members of the Legislative Assembly.

Bill 136 1986

An Act to amend the Legislative Assembly Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. The *Legislative Assembly Act*, being chapter 235 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:
- **15a.** The designation "M.P.P." shall be the official designation of a person who is elected to the Assembly.
- 2. This Act comes into force on the day it receives Royal Commence-Assent.
- 3. The short title of this Act is the Legislative Assembly Short title Amendment Act, 1986.



35 ELIZABETH II, 1986

Bill 137

An Act to amend the Pension Benefits Act

Mr. Mackenzie



1st Reading
2nd Reading
3rd Reading

3rd Reading
Royal Assent

October 20th, 1986

This Bill provides that, where private pension plans provide for bridging supplements, members of the pension plans, rather than employers, will benefit from changes in the *Canada Pension Plan* providing benefits to persons before they reach sixty-five years of age.

Bill 137 1986

An Act to amend the Pension Benefits Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Section 20 of the *Pension Benefits Act*, being chapter 373 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:
- (12) Notwithstanding any provision of a pension plan, the money to be paid as a bridging supplement under the terms of the pension plan in respect of Canada Pension Plan benefits R.S.C. 1970, remains payable to the member before the member reaches sixty-five years of age notwithstanding that the member is receiving Canada Pension Plan benefits, if those benefits were not contemplated at the time of the establishment of the pension plan or when it was most recently amended.

Bridging supplements

- 2. This Act comes into force on the day it receives Royal Commencement Assent.
- 3. The short title of this Act is the Pension Benefits Amend- Short title ment Act, 1986.



35 ELIZABETH II, 1986

Bill 138

An Act to establish the Ontario Lottery Profits Awards Council

Mr. Grande



1st Reading

October 20th, 1986

2nd Reading

3rd Reading

Royal Assent

The Bill creates the Ontario Lottery Profits Awards Council to deal with the profits of provincial lotteries and to promote cultural, multicultural and recreational activities.

Bill 138 1986

An Act to establish the Ontario Lottery Profits Awards Council

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

- "applicant" means a person or association that submits an application to the Council;
- "Council" means the Ontario Lottery Profits Awards Council;
- "recreation" includes physical fitness and sports activities and "recreational" has a corresponding meaning.
- **2.** A corporation, known as the "Ontario Lottery Profits Council Awards Council", consisting of fifteen members, is established.
- **3.**—(1) Any active cultural, multicultural or recreational Appointment association in Ontario having at least twenty-five members may nominate a candidate for appointment to the Council.
 - (2) The Lieutenant Governor in Council shall appoint,

Idem

- (a) five members from nominees of cultural associations:
- (b) five members from nominees of multicultural associations; and
- (c) five members from nominees of recreational associations.
- (3) The members of the Council shall be geographically ^{Idem} representative of the population of Ontario and each member shall hold office for a term of two years, except that, of those

first appointed, eight shall be appointed for a term of one year and seven for two years.

Chairman

4. The members of the Council, at the first meeting in each calendar year, shall elect from among themselves a chairman and a vice-chairman to hold office until a successor chairman or vice-chairman is elected.

Quorum

5. A majority of the members of the Council constitutes a quorum whether or not a vacancy exists in the membership of the Council

Staff

6. The Council may appoint such officers and employees as it considers appropriate for the purpose of carrying out its functions under this Act.

Objects

- 7. The Council shall.
 - (a) seek to promote, advance and develop cultural, multicultural and recreational activities and facilities in Ontario;
- R.S.O. 1980, c. 344
- (b) receive, consider and decide upon applications for grants and loans out of moneys made available under section 9 of the *Ontario Lottery Corporation Act* for the purposes referred to in clause (a);
- (c) perform such other duties as are assigned to it by the Legislature.

By-laws

8. The Council may make by-laws regulating its proceedings and generally for the conduct and management of its activities.

Hearing

9.—(1) An applicant who is dissatisfied with the Council's disposition of his or her application may require a hearing by mailing or delivering written notice to the chairman of the Council within fifteen days after receiving notice of the Council's initial decision.

Idem

(2) Upon receiving a notice under subsection (1), the Council shall promptly conduct a hearing into the application and may vary or revoke its initial decision and make any other decision regarding the application that the Council considers appropriate.

Annual report

10. The chairman of the Council shall annually file with the Chairman of Management Board of Cabinet a report upon the affairs of the Council, and the Chairman of Management Board of Cabinet shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

- 11. This Act comes into force on the day it receives Royal Commence-
- 12. The short title of this Act is the Ontario Lottery Profits Short title Awards Council Act, 1986.







Bill 139

Government Bill

Projet de loi 139

du gouvernement

Publication

2ND SESSION, 33RD LEGISLATURE, ONTARIO 35 ELIZABETH II, 1986

2º SESSION, 33º LÉGISLATURE, ONTARIO 35 ELIZABETH II, 1986

Bill 139

An Act to implement the Model Law on **International Commercial Arbitration adopted** by the United Nations **Commission on International** Trade Law

The Hon, I. Scott Attorney General

Projet de loi 139

Loi concernant la mise en application de la Loi type sur l'arbitrage commercial international adoptée par la Commission des Nations Unies pour le droit commercial international

L'honorable I. Scott

procureur général

1st Reading

October 21st, 1986

2nd Reading

3rd Reading

Royal Assent

1^{re} lecture

21 octobre 1986

2e lecture

3e lecture

sanction royale

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EXPLANATORY NOTES

The Bill implements the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law. The Model Law allows the parties to set the rules for their arbitration, but prescribes rules in the absence of any provisions to the contrary. The Model Law strictly limits the ability of the courts to intervene in an arbitration. It does, however, provide for the recognition and enforcement of foreign arbitral awards by the courts of Ontario.

The Bill includes definitions of certain terms used in the Model Law and supplements some of its provisions.

The Foreign Arbitral Awards Act, 1986 which implements the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards is repealed since the Model Law itself serves to implement this Convention.

The Model Law is set out in the Schedule to the Bill.

NOTES EXPLICATIVES

Le projet de loi met en application la Loi type sur l'arbitrage commercial international (le «Code») adoptée par la Commission des Nations Unies pour le droit commercial international. Le Code permet aux parties d'établir les règles en vue de leur arbitrage, mais prescrit des règles dans le cas où les parties n'ont prévu aucune disposition. Le Code impose d'étroites limites au pouvoir qu'a le tribunal d'intervenir dans un arbitrage. Toutefois, il prévoit la reconnaissance et l'exécution des sentences arbitrales étrangères par les tribunaux de l'Ontario.

Le projet de loi donne la définition de certains termes ou expressions qui figurent dans le Code. En outre il complète quelques-unes de ses dispositions.

La Loi de 1986 sur les sentences arbitrales étrangères qui met en oeuvre la Convention de l'Organisation des Nations Unies pour la reconnaissance et l'exécution des sentences arbitrales étrangères, est abrogée, étant donné que le Code lui-même sert à mettre en oeuvre cette Convention.

Le texte du Code se trouve à l'annexe du projet de loi.

Bill 139 1986

An Act to implement the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definition

1.—(1) In this Act,

"Code"

"Model Law" means the Model Law on International Commercial Arbitration, adopted by the United Nations Commission on International Trade Law on June 21, 1985, as set out in the Schedule.

Idem

(2) Except as otherwise provided, words and expressions used in this Act have the same meaning as the corresponding words and expressions in the Model Law.

Definition of "this State" in Model Law (3) In article 1 (1) of the Model Law, an "agreement in force between this State and any other State or States" means an agreement between Canada and any other country or countries that is in force in Ontario.

Idem

(4) In articles 34 (2) (b) (i) and 36 (1) (b) (i) of the Model Law, "the law of this State" means the laws of Ontario and any laws of Canada that are in force in Ontario.

Idem

(5) In article 35 (2) of the Model Law, "this State" means Canada.

Idem

(6) In articles 1 (2) and (5), 27, 34 (2) (b) (ii) and 36 (1) (b) (ii) of the Model Law, "this State" means Ontario.

Definition of "competent court" in Model Law

(7) In the Model Law, a reference to "a competent court" means the Supreme or District Court.

Projet de loi 139

1986

Loi concernant la mise en application de la Loi type sur l'arbitrage commercial international adoptée par la Commission des Nations Unies pour le droit commercial international

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit:

1 (1) La définition qui suit s'applique à la présente loi.

Définition

«Code» La Loi type sur l'arbitrage commercial international «Model Law» adoptée par la Commission des Nations Unies pour le droit commercial international le 21 juin 1985 et dont le texte est reproduit à l'annexe.

- (2) Sauf disposition contraire, les termes de la présente loi Idem s'entendent au sens du Code.
- (3) À l'article 1 (1) du Code, l'expression «accord multila- Définition téral ou bilatéral en vigueur pour le présent État» s'entend de État» l'accord multilatéral ou bilatéral auquel le Canada est partie et qui est en vigueur en Ontario.

- (4) Aux articles 34 (2) b) (i) et 36 (1) b) (i) du Code, l'ex- Idem pression «la loi du présent État» s'entend des lois de l'Ontario ainsi que des lois du Canada qui sont en vigueur en Ontario.
- (5) À l'article 35 (2) du Code, l'expression «le présent État» s'entend du Canada.
- (6) Aux articles 1 (2) et (5), 27, 34 (2) b) (ii) et 36 (1) b) (ii) du Code, l'expression «le présent État» s'entend de l'Ontario.
- (7) La mention de «tribunal compétent» dans le Code s'en- Définition du «tribunal tend de la Cour suprême ou de la Cour de district. compétent»

Model Law in force in Ontario

2.—(1) Subject to this Act, the Model Law is in force in Ontario.

Application

(2) The Model Law applies to international commercial arbitration agreements and awards, whether made before or after the coming into force of this Act.

Idem

(3) Despite article 1 (3) (c) of the Model Law, an arbitration conducted in Ontario between parties that all have their places of business in Ontario is not international only because the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

Conciliation and other proceedings

3. For the purpose of encouraging settlement of a dispute, an arbitral tribunal may, with the agreement of the parties, use mediation, conciliation or other procedures at any time during the arbitration proceedings and, with the agreement of the parties, the members of the arbitral tribunal are not disqualified from resuming their roles as arbitrators by reasons of the mediation, conciliation or other procedure.

Removal of arbitrator

4.—(1) Unless the parties otherwise agree, if an arbitrator is replaced or removed in accordance with the Model Law, any hearing held prior to the replacement or removal shall start afresh.

Idem

(2) The parties may remove an arbitrator or a substitute arbitrator at any time prior to the final award, regardless of how the arbitrator was appointed.

Article 11 (1) of Model

- 5. Article 11 (1) of the Model Law shall be deemed to Law replaced read as follows:
 - (1) A person of any nationality may be an arbitrator.

Rules applicable to substance of dispute

6. Despite article 28 (2) of the Model Law, if the parties fail to make a designation pursuant to article 28 (1) of the Model Law, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances respecting the dispute.

Consolidation proceedings

- 7.—(1) The Supreme or District Court, on the application of the parties to two or more arbitration proceedings, may order.
 - the arbitration proceedings to be consolidated, on terms it considers just;
 - (b) the arbitration proceedings to be heard at the same time, or one immediately after another; or

2 (1) Sous réserve de la présente loi, le Code est en Code en vigueur en vigueur en Ontario. Ontario

(2) Le Code s'applique aux conventions d'arbitrage commercial international conclues et aux sentences arbitrales rendues avant ou après l'entrée en vigueur de la présente loi.

Champ d'application

(3) Malgré l'article 1 (3) c) du Code, l'arbitrage qui a lieu Idem en Ontario entre des parties qui toutes ont leur établissement en Ontario, n'est pas considéré comme international pour la seule raison que les parties sont convenues expressément que l'objet de la convention d'arbitrage a des liens avec plus d'un pays.

3 Pour faciliter le règlement d'un différend, le tribunal Conciliation arbitral peut, à toute étape de la procédure arbitrale, avoir et autres modes de recours, avec l'accord des parties, à la médiation, à la conci-règlement liation ou à tout autre mode de règlement. Il peut également, avec leur accord, reprendre son rôle d'arbitre.

4 (1) Toute procédure orale antérieure à un remplacement Révocation ou à une révocation d'arbitre conforme au Code est, sauf décision contraire des parties, à recommencer.

(2) Les parties peuvent révoguer un arbitre ou un arbitre Idem remplaçant n'importe quand avant la sentence définitive, indépendamment du mode de nomination de celui-ci.

5 L'article 11 (1) du Code est réputé rédigé comme suit :

L'article 11 (1) du Code

- Une personne peut être nommée arbitre quelle que est remplacé soit sa nationalité.
- 6 Malgré l'article 28 (2) du Code, à défaut par les parties Règles applide procéder à la désignation prévue à son article 28 (1), le tribunal arbitral applique les règles de droit qu'il estime indi- différend quées compte tenu des circonstances de l'espèce.

cables au fond du

7 (1) La Cour suprême ou la Cour de district, sur demande Réunion de procédures des parties à plus d'une procédure arbitrale, peut ordonner :

- leur réunion, aux conditions qu'elle estime équitaa) bles:
- leur audition simultanée ou consécutive; b)

(c) any of the arbitration proceedings to be stayed until after the determination of any other of them.

Appointment of arbitral tribunal

(2) Where the court orders arbitration proceedings to be consolidated pursuant to clause (1) (a) and the parties to the consolidated arbitration proceedings are in agreement as to the choice of the arbitral tribunal for that arbitration proceeding, the court shall appoint the arbitral tribunal chosen by the parties, but if the parties cannot agree, the court may appoint the arbitral tribunal for that arbitration proceeding.

Court order not required for consolidation (3) Nothing in this section shall be construed as preventing the parties to two or more arbitration proceedings from agreeing to consolidate those arbitration proceedings and taking such steps as are necessary to effect that consolidation.

Stay of proceedings

8. Where, pursuant to article 8 of the Model Law, a court refers the parties to arbitration, the proceedings of the court are stayed with respect to the matters to which the arbitration relates.

Interim measures and security **9.** An order of the arbitral tribunal under article 17 of the Model Law for an interim measure of protection and the provision of security in connection with it is subject to the provisions of the Model Law as if it were an award.

Recognition and enforcement of foreign arbitral awards 10. For the purposes of articles 35 and 36 of the Model Law, an arbitral award includes a commercial arbitral award made outside Canada, even if the arbitration to which it relates is not international as defined in article 1 (3) of the Model Law.

Enforcement

11.—(1) An arbitral award recognized by the court is enforceable in the same manner as a judgment or order of the court.

Idem

(2) An arbitral award recognized by the court binds the persons as between whom it was made and may be relied on by any of those persons in any legal proceeding.

Crown bound

12. This Act applies to an arbitration to which Her Majesty is a party.

Aids to interpretation

13. For the purpose of interpreting the Model Law, recourse may be had, in addition to aids to interpretation ordinarily available under the law of Ontario, to,

(a) the Report of the United Nations Commission on International Trade Law on the work of its eighteenth session (June 3-21, 1985); and

- c) le sursis de telle ou telle d'entre elles jusqu'à détermination de n'importe laquelle des autres.
- (2) Dans les cas où la cour ordonne la réunion prévue à l'a-Nomination linéa (1) a) et où les parties à ces procédures sont d'accord sur arbitral le choix d'un tribunal arbitral, celui-ci est nommé par la cour. À défaut d'accord des parties, elle peut nommer un tribunal arbitral pour ces procédures.

(3) Le présent article n'a pas pour effet d'empêcher les parties à plus d'une procédure arbitrale de s'entendre sur leur réunion et de prendre toutes mesures nécessaires à cette fin.

Réunion sans ordonnance

8 Dans le cas où, en vertu de l'article 8 du Code, un tribu-Sursis de nal renvoie les parties à l'arbitrage, il est sursis aux procédures devant ce tribunal qui sont liées aux questions se rapportant à l'arbitrage.

procédures

9 Est assujettie aux dispositions du Code comme s'il s'agis- Mesures sait d'une sentence, l'ordonnance du tribunal arbitral prévue à l'article 17 du Code qui porte sur les mesures provisoires ou conservatoires ainsi que le versement d'une provision appropriée.

provisoires

10 Pour l'application des articles 35 et 36 du Code, une Reconnaissentence arbitrale s'entend notamment d'une sentence arbitrale commerciale rendue à l'extérieur du Canada, même si sentences l'arbitrage auquel elle est liée n'est pas international au sens étrangères de l'article 1 (3) du Code.

11 (1) La sentence arbitrale reconnue par le tribunal est Exécution exécutoire comme s'il s'agissait d'un jugement ou d'une ordonnance rendus par le tribunal.

(2) La sentence arbitrale reconnue par le tribunal lie les Idem personnes à l'égard desquelles elle a été rendue. Ces personnes peuvent invoquer la sentence dans toute action en justice.

- 12 La présente loi s'applique à l'arbitrage auquel Sa Couronne liée Majesté est partie.
- 13 Afin d'interpréter le Code, on peut avoir recours aux Guide d'interprétation documents suivants:
 - le Rapport de la Commission des Nations Unies a) pour le droit commercial international sur les travaux de sa dix-huitième session, du 3 au 21 juin 1985:

(b) the Analytical Commentary contained in the Report of the Secretary General to the eighteenth session of the United Nations Commission on International Trade Law.

Repeal

14. The *Foreign Arbitral Awards Act*, 1986, being chapter 25, is repealed.

Commencement 15. This Act comes into force on the day it receives Royal Assent.

Short title

16. The short title of this Act is the *International Commercial Arbitration Act*, 1986.

b) le commentaire analytique figurant dans le rapport du Secrétaire général à la dix-huitième session de la Commission des Nations Unies pour le droit commercial international.

Ces documents s'ajoutent aux guides d'interprétation auxquels on a recours habituellement en vertu de la loi de l'Ontario.

- **14** La Loi de 1986 sur les sentences arbitrales étrangères, Abrogation qui constitue le chapitre 25, est abrogée.
- **15** La présente loi entre en vigueur le jour où elle reçoit la Entrée en sanction royale.
- **16** Le titre abrégé de la présente loi est *Loi de 1986 sur* Titre abrégé *l'arbitrage commercial international*.

SCHEDULE

UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION

(As adopted by the United Nations Commission on International Trade Law on 21 June, 1985)

CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of application

- (1) This Law applies to international commercial arbitration, subject to any agreement in force between this State and any other State or States.
- (2) The provisions of this Law, except articles 8, 9, 35 and 36, apply only if the place of arbitration is in the territory of this State.
- (3) An arbitration is international if:
 - (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or
 - (b) one of the following places is situated outside the State in which the parties have their places of business:
 - (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement,
 - (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or
 - (c) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.
- (4) For the purposes of paragraph (3) of this article:
 - (a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;
 - (b) if a party does not have a place of business, reference is to be made to his habitual residence.
- (5) This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

Article 2. Definitions and rules of interpretation

For the purposes of this Law:

- (a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;
- (b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

ANNEXE

LOI TYPE DE LA CNUDCI SUR L'ARBITRAGE COMMERCIAL INTERNATIONAL

(telle qu'adoptée par la Commission des Nations Unies pour le droit commercial international le 21 juin 1985)

CHAPITRE PREMIER. DISPOSITIONS GÉNÉRALES

Article premier Champ d'application

- (1) La présente loi s'applique à l'arbitrage commercial international; elle ne porte atteinte à aucun accord multilatéral ou bilatéral en vigueur pour le présent État.
- (2) Les dispositions de la présente loi, à l'exception des articles 8, 9, 35 et 36, ne s'appliquent que si le lieu de l'arbitrage est situé sur le territoire du présent État.
- (3) Un arbitrage est international si:
 - a) les parties à une convention d'arbitrage ont, au moment de la conclusion de ladite convention, leur établissement dans des États différents; ou
 - b) un des lieux ci-après est situé hors de l'État dans lequel les parties ont leur établissement :
 - (i) le lieu de l'arbitrage, s'il est stipulé dans la convention d'arbitrage ou déterminé en vertu de cette convention,
 - (ii) tout lieu où doit être exécutée une partie substantielle des obligations issues de la relation commerciale ou le lieu avec lequel l'objet du différend a le lien le plus étroit; ou
 - c) les parties sont convenues expressément que l'objet de la convention d'arbitrage a des liens avec plus d'un pays.
- (4) Aux fins du paragraphe (3) du présent article :
 - a) si une partie a plus d'un établissement, l'établissement à prendre en considération est celui qui a la relation la plus étroite avec la convention d'arbitrage;
 - b) si une partie n'a pas d'établissement, sa résidence habituelle en tient lieu.
- (5) La présente loi ne porte atteinte à aucune autre loi du présent État en vertu de laquelle certains différends ne peuvent être soumis à l'arbitrage ou ne peuvent l'être qu'en application de dispositions autres que celles de la présente loi.

Article 2 Définitions et règles d'interprétation

Aux fins de la présente loi :

- a) le terme «arbitrage» désigne tout arbitrage que l'organisation en soit ou non confiée à une institution permanente d'arbitrage;
- b) l'expression «tribunal arbitral» désigne un arbitre unique ou un groupe d'arbitres;

- (c) "court" means a body or organ of the judical system of a State;
- (d) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;
- (e) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;
- (f) where a provision of this Law, other than in articles 25 (a) and 32 (2) (a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

Article 3. Receipt of written communications

- (1) Unless otherwise agreed by the parties:
 - (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;
 - (b) the communication is deemed to have been received on the day it is so delivered.
- (2) The provisions of this article do not apply to communications in court proceedings.

Article 4 Waiver of right to object

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

Article 5. Extent of court intervention

In matters governed by this Law, no court shall intervene except where so provided in this Law.

Article 6. Court or other authority for certain functions of arbitration assistance and supervision

The functions referred to in articles 11 (3), 11 (4), 13 (3), 14, 16 (3) and 34 (2) shall be performed by the Supreme or District Court.

- c) le terme «tribunal» désigne un organisme ou organe du système judiciaire d'un État;
- d) lorsqu'une disposition de la présente loi, à l'exception de l'article 28, laisse aux parties la liberté de décider d'une certaine question, cette liberté emporte le droit pour les parties d'autoriser un tiers, y compris une institution, à décider de cette question;
- e) lorsqu'une disposition de la présente loi se réfère au fait que les parties sont convenues ou peuvent convenir d'une question, ou se réfère de toute autre manière à une convention des parties, une telle convention englobe tout règlement d'arbitrage qui y est mentionné;
- f) lorsqu'une disposition de la présente loi, autre que celles de l'alinéa a) de l'article 25 et de l'alinéa (2) a) de l'article 32, se réfère à une demande, cette disposition s'applique également à une demande reconventionnelle et lorsqu'elle se réfère à des conclusions en défense, elle s'applique également à des conclusions en défense sur une demande reconventionnelle

Article 3 Réception de communications écrites

- (1) Sauf convention contraire des parties :
 - a) toute communication écrite est réputée avoir été reçue si elle a été remise soit à la personne du destinataire, soit à son établissement, à sa résidence habituelle ou à son adresse postale; si aucun de ces lieux n'a pu être trouvé après une enquête raisonnable, une communication écrite est réputée avoir été reçue si elle a été envoyée au dernier établissement, à la dernière résidence habituelle ou à la dernière adresse postale connus du destinataire par lettre recommandée ou tout autre moyen attestant la tentative de remise;
 - b) la communication est réputée avoir été reçue le jour d'une telle remise.
- (2) Les dispositions du présent article ne s'appliquent pas aux communications échangées dans le cadre de procédures judiciaires.

Article 4 Renonciation au droit de faire objection

Est réputée avoir renoncé à son droit de faire objection toute partie qui, bien qu'elle sache que l'une des dispositions de la présente loi auxquelles les parties peuvent déroger, ou toute condition énoncée dans la convention d'arbitrage, n'a pas été respectée, poursuit néanmoins l'arbitrage sans formuler d'objection promptement ou, s'il est prévu un délai à cet effet, dans ledit délai.

Article 5 Domaine de l'intervention des tribunaux

Pour toutes les questions régies par la présente loi, les tribunaux ne peuvent intervenir que dans les cas où celle-ci le prévoit.

Article 6 Tribunal ou autre autorité chargé de certaines fonctions d'assistance et de contrôle dans le cadre de l'arbitrage

Les fonctions mentionnées aux articles 11 (3), 11 (4), 13 (3), 14, 16 (3) et 34 (2) sont confiées... (Chaque État adoptant la Loi type précise le tribunal, les tribunaux ou, lorsqu'elle y est mentionnée, une autre autorité compétente pour s'acquitter de ces fonctions.)

CHAPTER II. ARBITRATION AGREEMENT

Article 7. Definition and form of arbitration agreement

- (1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

Article 8. Arbitration agreement and substantive claim before court

- (1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.
- (2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Article 9. Arbitration agreement and interim measures by court

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. Number of arbitrators

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

Article 11. Appointment of arbitrators

- (1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- (2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.
- (3) Failing such agreement,

CHAPITRE II. CONVENTION D'ARBITRAGE

Article 7 Définition et forme de la convention d'arbitrage

- (1) Une «convention d'arbitrage» est une convention par laquelle les parties décident de soumettre à l'arbitrage, tous les différends ou certains des différends qui se sont élevés ou pourraient s'élever entre elles au sujet d'un rapport de droit déterminé, contractuel ou non contractuel. Une convention d'arbitrage peut prendre la forme d'une clause compromissoire dans un contrat ou d'une convention séparée.
- (2) La convention d'arbitrage doit se présenter sous forme écrite. Une convention est sous forme écrite si elle est consignée dans un document signé par les parties ou dans un échange de lettres, de communications télex, de télégrammes ou de tout autre moyen de télécommunications qui en atteste l'existence, ou encore dans l'échange d'une conclusion en demande et d'une conclusion en réponse dans lequel l'existence d'une telle convention est alléguée par une partie et n'est pas contestée par l'autre. La référence dans un contrat à un document contenant une clause compromissoire vaut convention d'arbitrage, à condition que ledit contrat soit sous forme écrite et que la référence soit telle qu'elle fasse de la clause une partie du contrat.

Article 8 Convention d'arbitrage et actions intentées quant au fond devant un tribunal

- (1) Le tribunal saisi d'un différend sur une question faisant l'objet d'une convention d'arbitrage renverra les parties à l'arbitrage si l'une d'entre elles le demande au plus tard lorsqu'elle soumet ses premières conclusions quant au fond du différend, à moins qu'il ne constate que ladite convention est caduque, inopérante ou non susceptible d'être exécutée.
- (2) Lorsque le tribunal est saisi d'une action visée au paragraphe (1) du présent article, la procédure arbitrale peut néanmoins être engagée ou poursuivie et une sentence peut être rendue en attendant que le tribunal ait statué.

Article 9 Convention d'arbitrage et mesures provisoires prises par un tribunal

La demande par une partie à un tribunal, avant ou pendant la procédure arbitrale, de mesures provisoires ou conservatoires et l'octroi de telles mesures par un tribunal ne sont pas incompatibles avec une convention d'arbitrage.

CHAPITRE III. COMPOSITION DU TRIBUNAL ARBITRAL

Article 10 Nombre d'arbitres

- (1) Les parties sont libres de convenir du nombre d'arbitres.
- (2) Faute d'une telle convention, il est nommé trois arbitres.

Article 11 Nomination de l'arbitre ou des arbitres

- (1) Nul ne peut, en raison de sa nationalité, être empêché d'exercer des fonctions d'arbitre, sauf convention contraire des parties.
- (2) Les parties sont libres de convenir de la procédure de nomination de l'arbitre ou des arbitres, sans préjudice des dispositions des paragraphes (4) et (5) du présent article.
- (3) Faute d'une telle convention :

- (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;
- (b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.
- (4) Where, under an appointment procedure agreed upon by the parties:
 - (a) a party fails to act as required under such procedure; or
 - (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure; or
 - (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

Article 12. Grounds for challenge

- (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.
- (2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Article 13. Challenge procedure

- (1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.
- (2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in

- a) en cas d'arbitrage par trois arbitres, chaque partie nomme un arbitre et les deux autres arbitres ainsi nommés choisissent le troisième arbitre; si une partie ne nomme pas un arbitre dans un délai de trente jours à compter de la réception d'une demande à cette fin émanant de l'autre partie, ou si les deux arbitres ne s'accordent pas sur le choix du troisième arbitre dans un délai de trente jours à compter de leur désignation, la nomination est effectuée, sur la demande d'une partie, par le tribunal ou autre autorité visé à l'article 6;
- b) en cas d'arbitrage par un arbitre unique, si les parties ne peuvent s'accorder sur le choix de l'arbitre, celui-ci est nommé, sur la demande d'une partie, par le tribunal ou autre autorité visé à l'article
 6.
- (4) Lorsque, durant une procédure de nomination convenue par les parties :
 - a) une partie n'agit pas conformément à ladite procédure; ou
 - b) les parties, ou deux arbitres, ne peuvent parvenir à un accord conformément à ladite procédure; ou
 - c) un tiers, y compris une institution, ne s'acquitte pas d'une fonction qui lui est conférée dans ladite procédure,

l'une ou l'autre partie peut prier le tribunal ou autre autorité visé à l'article 6 de prendre la mesure voulue, à moins que la convention relative à la procédure de nomination ne stipule d'autres moyens d'assurer cette nomination.

(5) La décision sur une question confiée au tribunal ou autre autorité visé à l'article 6, conformément aux paragraphes (3) et (4) du présent article, n'est pas susceptible de recours. Lorsqu'il nomme un arbitre, le tribunal tient compte de toutes les qualifications requises de l'arbitre par convention des parties et de toutes considérations propres à garantir la nomination d'un arbitre indépendant et impartial et, lorsqu'il nomme un arbitre unique ou un troisième arbitre, il tient également compte du fait qu'il peut être souhaitable de nommer un arbitre d'une nationalité différente de celle des parties.

Article 12 Motifs de récusation

- (1) Lorsqu'une personne est pressentie en vue de sa nomination éventuelle en qualité d'arbitre, elle signale toutes circonstances de nature à soulever des doutes légitimes sur son impartialité ou sur son indépendance. À partir de la date de sa nomination et durant toute la procédure arbitrale, l'arbitre signale sans tarder de telles circonstances aux parties, à moins qu'il ne l'ait déjà fait.
- (2) Un arbitre ne peut être récusé que s'il existe des circonstances de nature à soulever des doutes légitimes sur son impartialité ou son indépendance, ou si celui-ci ne possède pas les qualifications convenues par les parties. Une partie ne peut récuser l'arbitre qu'elle a nommé ou à la nomination duquel elle a participé que pour une cause dont elle a eu connaissance après cette nomination.

Article 13 Procédure de récusation

- (1) Sous réserve des dispositions du paragraphe (3) du présent article, les parties sont libres de convenir de la procédure de récusation de l'arbitre.
- (2) Faute d'un tel accord, la partie qui a l'intention de récuser un arbitre expose par écrit les motifs de la récusation au tribunal arbitral, dans un

- article 12 (2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.
- (3) If a challenge under any procedure agreed upon the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Article 14. Failure or impossibility to act

- (1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.
- (2) If, under this article or article 13 (2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12 (2).

Article 15. Appointment of substitute arbitrator

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

Article 16. Competence of arbitral tribunal to rule on its jurisdiction

- (1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.
- (2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.
- (3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If

délai de quinze jours à compter de la date à laquelle elle a eu connaissance de la constitution du tribunal arbitral ou de la date à laquelle elle a eu connaissance des circonstances visées à l'article 12 (2). Si l'arbitre récusé ne se déporte pas ou que l'autre partie n'accepte pas la récusation, le tribunal arbitral se prononce sur la récusation.

(3) Si la récusation ne peut être obtenue selon la procédure convenue par les parties ou en application du paragraphe (2) du présent article, la partie récusante peut, dans un délai de trente jours après avoir eu communication de la décision rejetant la récusation, prier le tribunal ou autre autorité visé à l'article 6 de prendre sur la récusation une décision qui ne sera pas susceptible de recours; dans l'attente de cette décision, le tribunal arbitral y compris l'arbitre récusé, peut poursuivre la procédure arbitrale et rendre une sentence.

Article 14 Carence ou incapacité d'un arbitre

- (1) Lorsqu'un arbitre se trouve dans l'impossibilité de droit ou de fait de remplir sa mission ou, pour d'autres raisons, ne s'acquitte pas de ses fonctions dans un délai raisonnable, son mandat prend fin s'il se déporte ou si les parties conviennent d'y mettre fin. Au cas où il subsiste un désaccord quant à l'un quelconque de ces motifs, l'une ou l'autre partie peut prier le tribunal ou autre autorité visé à l'article 6 de prendre une décision, qui ne sera pas susceptible de recours, sur la cessation du mandat.
- (2) Le fait qu'en application du présent article ou de l'article 13 (2), un arbitre se déporte ou qu'une partie accepte que le mandat d'un arbitre prenne fin n'implique pas reconnaissance des motifs mentionnés à l'article 12 (2) ou dans le présent article.

Article 15 Nomination d'un arbitre remplaçant

Lorsqu'il est mis fin au mandat d'un arbitre conformément à l'article 13 ou 14, ou lorsque celui-ci se déporte pour toute autre raison, ou lorsque son mandat est révoqué par accord des parties ou dans tout autre cas où il est mis fin à son mandat, un arbitre remplaçant est nommé conformément aux règles qui étaient applicables à la nomination de l'arbitre remplacé.

CHAPITRE IV. COMPÉTENCE DU TRIBUNAL ARBITRAL

Article 16 Compétence du tribunal arbitral pour statuer sur sa propre compétence

- (1) Le tribunal arbitral peut statuer sur sa propre compétence, y compris sur toute exception relative à l'existence ou à la validité de la convention d'arbitrage. À cette fin, une clause compromissoire faisant partie d'un contrat est considérée comme une convention distincte des autres clauses du contrat. La constatation de nullité du contrat par le tribunal arbitral n'entraîne pas de plein droit la nullité de la clause compromissoire.
- (2) L'exception d'incompétence du tribunal arbitral peut être soulevée au plus tard lors du dépôt des conclusions en défense. Le fait pour une partie d'avoir désigné un arbitre ou d'avoir participé à sa désignation ne la prive pas du droit de soulever cette exception. L'exception prise de ce que la question litigieuse excéderait les pouvoirs du tribunal arbitral est soulevée dès que la question alléguée comme excédant ses pouvoirs est soulevée pendant la procédure arbitrale. Le tribunal arbitral peut, dans l'un ou l'autre cas, admettre une exception soulevée après le délai prévu, s'il estime que le retard est dû à une cause valable.
- (3) Le tribunal arbitral peut statuer sur l'exception visée au paragraphe (2) du présent article soit en la traitant comme une question préalable, soit

the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

Article 17. Power of arbitral tribunal to order interim measures

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

Article 18. Equal treatment of parties

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

Article 19. Determination of rules of procedure

- (1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.
- (2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 20. Place of arbitration

- (1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.
- (2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Article 21. Commencement of arbitral proceedings

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Article 22. Language

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

dans sa sentence sur le fond. Si le tribunal arbitral détermine, à titre de question préalable, qu'il est compétent, l'une ou l'autre partie peut, dans un délai de trente jours après avoir été avisée de cette décision, demander au tribunal visé à l'article 6 de rendre une décision sur ce point, laquelle ne sera pas susceptible de recours; en attendant qu'il soit statué sur cette demande, le tribunal arbitral est libre de poursuivre la procédure arbitrale et de rendre une sentence.

Article 17 Pouvoir du tribunal arbitral d'ordonner des mesures provisoires

Sauf convention contraire des parties, le tribunal arbitral peut, à la demande d'une partie, ordonner à toute partie de prendre toute mesure provisoire ou conservatoire qu'il juge nécessaire en ce qui concerne l'objet du différend. Le tribunal arbitral peut, à ce titre, exiger de toute partie le versement d'une provision appropriée.

CHAPITRE V. CONDUITE DE LA PROCÉDURE ARBITRALE

Article 18 Égalité de traitement des parties

Les parties doivent être traitées sur un pied d'égalité et chaque partie doit avoir toute possibilité de faire valoir ses droits.

Article 19 Détermination des règles de procédure

- (1) Sous réserve des dispositions de la présente loi, les parties sont libres de convenir de la procédure à suivre par le tribunal arbitral.
- (2) Faute d'une telle convention, le tribunal arbitral peut, sous réserve des dispositions de la présente loi, procéder à l'arbitrage comme il le juge approprié. Les pouvoirs conférés au tribunal arbitral comprennent celui de juger de la recevabilité, de la pertinence et de l'importance de toute preuve produite.

Article 20 Lieu de l'arbitrage

- (1) Les parties sont libres de décider du lieu de l'arbitrage. Faute d'une telle décision, ce lieu est fixé par le tribunal arbitral, compte tenu des circonstances de l'affaire, y compris les convenances des parties.
- (2) Nonobstant les dispositions du paragraphe (1) du présent article, le tribunal arbitral peut, sauf convention contraire des parties, se réunir en tout lieu qu'il jugera approprié pour l'organisation de consultations entre ses membres, l'audition des témoins, des experts ou des parties, ou pour l'inspection de marchandises, d'autres biens ou de pièces.

Article 21 Début de la procédure arbitrale

Sauf convention contraire des parties, la procédure arbitrale concernant un différend déterminé débute à la date à laquelle la demande de soumission de ce différend à l'arbitrage est reçue par le défendeur.

Article 22 Langue

(1) Les parties sont libres de convenir de la langue ou des langues à utiliser dans la procédure arbitrale. Faute d'un tel accord, le tribunal arbitral décide de la langue ou des langues à utiliser dans la procédure. Cet accord ou cette décision, à moins qu'il n'en soit convenu ou décidé autrement, s'appliquent à toute déclaration écrite d'une partie, à toute procédure orale et à toute sentence, décision ou autre communication du tribunal arbitral.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Article 23. Statements of claim and defence

- (1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.
- (2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Article 24. Hearings and written proceedings

- (1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.
- (2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.
- (3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Article 25. Default of a party

Unless otherwise agreed by the parties, if, without showing sufficient cause.

- (a) the claimant fails to communicate his statement of claim in accordance with article 23 (1), the arbitral tribunal shall terminate the proceedings;
- (b) the respondent fails to communicate his statement of defence in accordance with article 23 (1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;
- (c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Article 26. Expert appointed by arbitral tribunal

- (1) Unless otherwise agreed by the parties, the arbitral tribunal,
 - (a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(2) Le tribunal arbitral peut ordonner que toute pièce soit accompagnée d'une traduction dans la langue ou les langues convenues par les parties ou choisies par le tribunal arbitral.

Article 23 Conclusions en demande et en défense

- (1) Dans le délai convenu par les parties ou fixé par le tribunal arbitral, le demandeur énonce les faits au soutien de sa demande, les points litigieux et l'objet de la demande et le défendeur énonce ses défenses à propos de ces questions, à moins que les parties ne soient autrement convenues des indications devant figurer dans les conclusions. Les parties peuvent accompagner leurs conclusions de toutes pièces qu'elles jugeront pertinentes ou y mentionner les pièces ou autres moyens de preuve qu'elles produiront.
- (2) Sauf convention contraire des parties, l'une ou l'autre partie peut modifier ou compléter sa demande ou ses défenses, au cours de la procédure arbitrale, à moins que le tribunal arbitral considère ne pas devoir autoriser un tel amendement en raison du retard avec lequel il est formulé.

Article 24 Procédure orale et procédure écrite

- (1) Sauf convention contraire des parties, le tribunal arbitral décide si la procédure doit comporter des phases orales pour la production de preuves ou pour l'exposé oral des arguments, ou si elle se déroulera sur pièces. Cependant, à moins que les parties n'aient convenu qu'il n'y aura pas de procédure orale, le tribunal arbitral organise une telle procédure à un stade approprié de la procédure arbitrale, si une partie lui en fait la demande.
- (2) Les parties recevront suffisamment longtemps à l'avance notification de toutes audiences et de toutes réunions du tribunal arbitral tenues aux fins de l'inspection de marchandises, d'autres biens ou de pièces.
- (3) Toutes les conclusions, pièces ou informations que l'une des parties fournit au tribunal arbitral doivent être communiquées à l'autre partie. Tout rapport d'expert ou document présenté en tant que preuve sur lequel le tribunal pourrait s'appuyer pour statuer doit également être communiqué aux parties.

Article 25 Défaut d'une partie

Sauf convention contraire des parties, si, sans invoquer d'empêchement légitime :

- a) le demandeur ne présente pas sa demande conformément à l'article 23 (1), le tribunal arbitral met fin à la procédure arbitrale;
- b) le défendeur ne présente pas ses défenses conformément à l'article 23

 (1), le tribunal arbitral poursuit la procédure arbitrale sans considérer ce défaut en soi comme une acceptation des allégations du demandeur;
- c) l'une des parties omet de comparaître à l'audience ou de produire des documents, le tribunal arbitral peut poursuivre la procédure et statuer sur la base des éléments de preuve dont il dispose.

Article 26 Expert nommé par le tribunal arbitral

- (1) Sauf convention contraire des parties, le tribunal arbitral :
 - a) peut nommer un ou plusieurs experts chargés de lui faire rapport sur les points précis qu'il déterminera;

- (b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.
- (2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

Article 27. Court assistance in taking evidence

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Article 28. Rules applicable to substance of dispute

- (1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.
- (2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
- (3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.
- (4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Article 29. Decision making by panel of arbitrators

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

Article 30. Settlement

- (1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
- (2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

- b) peut demander à une partie de fournir à l'expert tous renseignements appropriés ou de lui soumettre ou de lui rendre accessibles, aux fins d'examen, toutes pièces ou toutes marchandises ou autres biens pertinents.
- (2) Sauf convention contraire des parties, si une partie en fait la demande ou si le tribunal arbitral le juge nécessaire, l'expert, après présentation de son rapport écrit ou oral, participe à une audience à laquelle les parties peuvent l'interroger et faire venir en qualité de témoins des experts qui déposent sur les questions litigieuses.

Article 27 Assistance des tribunaux pour l'obtention de preuves

Le tribunal arbitral, ou une partie avec l'approbation du tribunal arbitral, peut demander à un tribunal compétent du présent État une assistance pour l'obtention de preuves. Le tribunal peut satisfaire à cette demande, dans les limites de sa compétence et conformément aux règles relatives à l'obtention de preuves.

CHAPITRE VI. PRONONCÉ DE LA SENTENCE ET CLÔTURE DE LA PROCÉDURE

Article 28 Règles applicables au fond du différend

- (1) Le tribunal arbitral tranche le différend conformément aux règles de droit choisies par les parties comme étant applicables au fond du différend. Toute désignation de la loi ou du système juridique d'un État donné est considérée, sauf indication contraire expresse, comme désignant directement les règles juridiques de fond de cet État et non ses règles de conflit de lois.
- (2) À défaut d'une telle désignation par les parties, le tribunal arbitral applique la loi désignée par la règle de conflit de lois qu'il juge applicable en l'espèce.
- (3) Le tribunal arbitral statue ex aequo et bono ou en qualité d'amiable compositeur uniquement si les parties l'y ont expressément autorisé.
- (4) Dans tous les cas, le tribunal arbitral décide conformément aux stipulations du contrat et tient compte des usages du commerce applicables à la transaction.

Article 29 Prise de décisions par plusieurs arbitres

Dans une procédure arbitrale comportant plus d'un arbitre, toute décision du tribunal arbitral est, sauf convention contraire des parties, prise à la majorité de tous ses membres. Toutefois, les questions de procédure peuvent être tranchées par un arbitre-président, si ce dernier y est autorisé par les parties ou par tous les membres du tribunal arbitral.

Article 30 Règlement par accord des parties

- (1) Si, durant la procédure arbitrale, les parties s'entendent pour régler le différend, le tribunal arbitral met fin à la procédure arbitrale et, si les parties lui en font la demande et s'il n'y voit pas d'objection, constate le fait par une sentence arbitrale rendue par accord des parties.
- (2) La sentence d'accord des parties est rendue conformément aux dispositions de l'article 31 et mentionne le fait qu'il s'agit d'une sentence. Une telle sentence a le même statut et le même effet que toute autre sentence prononcée sur le fond de l'affaire.

Article 31. Form and contents of award

- (1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.
- (2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.
- (3) The award shall state its date and the place of arbitration as determined in accordance with article 20 (1). The award shall be deemed to have been made at that place.
- (4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

Article 32. Termination of proceedings

- (1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:
 - (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
 - (b) the parties agree on the termination of the proceedings;
 - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34 (4).

Article 33. Correction and interpretation of award: additional award

- (1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:
 - (a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
 - (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1) (a) of this article on its own initiative within thirty days of the date of the award.

Article 31 Forme et contenu de la sentence

- (1) La sentence est rendue par écrit et signée par l'arbitre ou les arbitres. Dans la procédure arbitrale comprenant plusieurs arbitres, les signatures de la majorité des membres du tribunal arbitral suffisent, pourvu que soit mentionnée la raison de l'omission des autres.
- (2) La sentence est motivée, sauf si les parties sont convenues que tel ne doit pas être le cas ou s'il s'agit d'une sentence rendue par accord des parties conformément à l'article 30.
- (3) La sentence mentionne la date à laquelle elle est rendue, ainsi que le lieu de l'arbitrage déterminé conformément à l'article 20 (1). La sentence est réputée avoir été rendue audit lieu.
- (4) Après le prononcé de la sentence, une copie signée par l'arbitre ou les arbitres conformément au paragraphe (1) du présent article en est remise à chacune des parties.

Article 32 Clôture de la procédure

- (1) La procédure arbitrale est close par le prononcé de la sentence définitive ou par une ordonnance de clôture rendue par le tribunal arbitral conformément au paragraphe (2) du présent article.
- (2) Le tribunal arbitral ordonne la clôture de la procédure arbitrale lorsque:
 - a) le demandeur retire sa demande, à moins que le défendeur y fasse objection et que le tribunal arbitral reconnaisse qu'il a légitimement intérêt à ce que le différend soit définitivement réglé;
 - b) les parties conviennent de clore la procédure;
 - c) le tribunal arbitral constate que la poursuite de la procédure est, pour toute autre raison, devenue superflue ou impossible.
- (3) Le mandat du tribunal arbitral prend fin avec la clôture de la procédure arbitrale, sous réserve des dispositions de l'article 33 et du paragraphe (4) de l'article 34.

Article 33 Rectification et interprétation de la sentence et sentence additionnelle

- (1) Dans les trente jours qui suivent la réception de la sentence, à moins que les parties ne soient convenues d'un autre délai :
 - a) une des parties peut, moyennant notification à l'autre, demander au tribunal arbitral de rectifier dans le texte de la sentence toute erreur de calcul, toute erreur matérielle ou typographique ou toute erreur de même nature;
 - b) si les parties en sont convenues, une partie peut, moyennant notification à l'autre, demander au tribunal arbitral de donner une interprétation d'un point ou passage précis de la sentence.

Si le tribunal arbitral considère que la demande est justifiée, il fait la rectification ou donne l'interprétation dans les trente jours qui suivent la réception de la demande. L'interprétation fait partie intégrante de la sentence.

(2) Le tribunal arbitral peut, de son propre chef, rectifier toute erreur du type visé à l'alinéa a) du paragraphe (1) du présent article dans les trente jours qui suivent la date de la sentence.

- (3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.
- (4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.
- (5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII. RECOURSE AGAINST AWARD

- Article 34. Application for setting aside as exclusive recourse against arbitral award
- (1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.
- (2) An arbitral award may be set aside by the court specified in article 6 only if:
 - (a) the party making the application furnishes proof that:
 - (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State, or
 - (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case, or
 - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside, or
 - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or
 - (b) the court finds that:
 - (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State, or
 - (ii) the award is in conflict with the public policy of this State.

- (3) Sauf convention contraire des parties, l'une des parties peut, moyennant notification à l'autre, demander au tribunal arbitral, dans les trente jours qui suivent la réception de la sentence, de rendre une sentence additionnelle sur des chefs de demande exposés au cours de la procédure arbitrale mais omis dans la sentence. S'il juge la demande justifiée, le tribunal arbitral complète sa sentence dans les soixante jours.
- (4) Le tribunal arbitral peut prolonger, si besoin est, le délai dont il dispose pour rectifier, interpréter ou compléter la sentence en vertu du paragraphe (1) ou (3) du présent article.
- (5) Les dispositions de l'article 31 s'appliquent à la rectification ou l'interprétation de la sentence ou à la sentence additionnelle.

CHAPITRE VII. RECOURS CONTRE LA SENTENCE

- Article 34 La demande d'annulation comme recours exclusif contre la sentence arbitrale
- (1) Le recours formé devant un tribunal contre une sentence arbitrale ne peut prendre la forme que d'une demande d'annulation conformément aux paragraphes (2) et (3) du présent article.
- (2) La sentence arbitrale ne peut être annulée par le tribunal visé à l'article 6 que si :
 - a) la partie en faisant la demande apporte la preuve :
 - (i) qu'une partie à la convention d'arbitrage visée à l'article 7 était frappée d'une incapacité; ou que ladite convention n'est pas valable en vertu de la loi à laquelle les parties l'ont subordonnée ou, à défaut d'une indication à cet égard, en vertu de la loi du présent État, ou
 - (ii) qu'elle n'a pas été dûment informée de la nomination d'un arbitre ou de la procédure arbitrale, ou qu'il lui a été impossible pour une autre raison de faire valoir ses droits, ou
 - (iii) que la sentence porte sur un différend non visé dans le compromis ou n'entrant pas dans les prévisions de la clause compromissoire, ou qu'elle contient des décisions qui dépassent les termes du compromis ou de la clause compromissoire, étant entendu toutefois que, si les dispositions de la sentence qui ont trait à des questions soumises à l'arbitrage peuvent être dissociées de celles qui ont trait à des questions non soumises à l'arbitrage, seule la partie de la sentence contenant des décisions sur les questions non soumises à l'arbitrage pourra être annulé, ou
 - (iv) que la constitution du tribunal arbitral, ou la procédure arbitrale, n'a pas été conforme à la convention des parties, à condition que cette convention ne soit pas contraire à une disposition de la présente loi à laquelle les parties ne peuvent déroger, ou, à défaut d'une telle convention, qu'elle n'a pas été conforme à la présente loi; ou

b) le tribunal constate:

- (i) que l'objet du différend n'est pas susceptible d'être réglé par arbitrage conformément à la loi du présent État, ou
- (ii) que la sentence est contraire à l'ordre public du présent État.

- (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.
- (4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

Article 35. Recognition and enforcement

- (1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.
- (2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.

Article 36. Grounds for refusing recognition or enforcement

- (1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:
 - (a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:
 - (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made, or
 - (ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case, or
 - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced, or
 - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, fail-

- (3) Une demande d'annulation ne peut être présentée après l'expiration d'un délai de trois mois à compter de la date à laquelle la partie présentant cette demande a reçu communication de la sentence ou, si une demande a été faite en vertu de l'article 33, à compter de la date à laquelle le tribunal arbitral a pris une décision sur cette demande.
- (4) Lorsqu'il est prié d'annuler une sentence, le tribunal peut, le cas échéant et à la demande d'une partie, suspendre la procédure d'annulation pendant une période dont il fixe la durée afin de donner au tribunal arbitral la possibilité de reprendre la procédure arbitrale ou de prendre toute autre mesure que ce dernier juge susceptible d'éliminer les motifs d'annulation.

CHAPITRE VIII. RECONNAISSANCE ET EXÉCUTION DES SENTENCES

Article 35 Reconnaissance et exécution

- (1) La sentence arbitrale, quel que soit le pays où elle a été rendue, est reconnue comme ayant force obligatoire et, sur requête adressée par écrit au tribunal compétent, est exécutée sous réserve des dispositions du présent article et de l'article 36.
- (2) La partie qui invoque la sentence ou qui en demande l'exécution doit en fournir l'original dûment authentifié ou une copie certifiée conforme, ainsi que l'original de la convention d'arbitrage mentionnée à l'article 7 ou une copie certifiée conforme. Si ladite sentence ou ladite convention n'est pas rédigée dans une langue officielle du présent État, la partie en produira une traduction dûment certifiée dans cette langue.

Article 36 Motifs de refus de la reconnaissance ou de l'exécution

- (1) La reconnaissance ou l'exécution d'une sentence arbitrale, quel que soit le pays où elle a été rendue, ne peut être refusée que :
 - a) sur la demande de la partie contre laquelle elle est invoquée, si ladite partie présente au tribunal compétent auquel est demandée la reconnaissance ou l'exécution la preuve :
 - (i) qu'une partie à la convention d'arbitrage visée à l'article 7 était frappée d'une incapacité; ou que ladite convention n'est pas valable en vertu de la loi à laquelle les parties l'ont subordonnée ou, à défaut d'une indication à cet égard, en vertu de la loi du pays où la sentence a été rendue, ou
 - (ii) que la partie contre laquelle la sentence est invoquée n'a pas été dûment informée de la désignation d'un arbitre ou de la procédure arbitrale, ou qu'il lui a été impossible pour une autre raison de faire valoir ses droits, ou
 - (iii) que la sentence porte sur un différend non visé dans le compromis ou n'entrant pas dans les prévisions de la clause compromissoire, ou qu'elle contient des décisions qui dépassent les termes du compromis ou de la clause compromissoire, étant entendu toutefois que, si les dispositions de la sentence qui ont trait à des questions soumises à l'arbitrage peuvent être dissociées de celles qui ont trait à des questions non soumises à l'arbitrage, seule la partie de la sentence contenant des décisions sur les questions soumises à l'arbitrage pourra être reconnue et exécutée, ou
 - (iv) que la constitution du tribunal arbitral, ou la procédure arbitrale,
 n'a pas été conforme à la convention des parties ou, à défaut

ing such agreement, was not in accordance with the law of the country where the arbitration took place, or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State, or
- (ii) the recognition or enforcement of the award would be contrary to the public policy of this State.
- (2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1) (a) (v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

d'une telle convention, à la loi du pays où l'arbitrage a eu lieu, ou

- (v) que la sentence n'est pas encore devenue obligatoire pour les parties ou a été annulée ou suspendue par une tribunal du pays dans lequel, ou en vertu de la loi duquel elle a été rendue; ou
- b) si le tribunal constate que:
 - (i) l'objet du différend n'est pas susceptible d'être réglé par arbitrage conformément à la loi du présent État, ou que
 - (ii) la reconnaissance ou l'exécution de la sentence serait contraire à l'ordre public du présent État.
- (2) Si une demande d'annulation ou de suspension d'une sentence a été présentée à un tribunal visé au sous-alinéa (1) a) (v) du présent article, le tribunal auquel est demandée la reconnaissance ou l'exécution peut, s'il le juge approprié, surseoir à statuer et peut aussi, à la requête de la partie demandant la reconnaissance ou l'exécution de la sentence, ordonner à l'autre partie de fournir des sûretés convenables.



35 ELIZABETH II, 1986

Bill 140



An Act to amend the Legislative Assembly Retirement Allowances Act

Mr. McLean

1st Reading
2nd Reading

October 21st, 1986

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to suspend retirement allowances while a person entitled thereto is receiving compensation for acting as a member of a board, commission or other body holding office at the nomination of the Lieutenant Governor in Council.

Bill 140 1986

An Act to amend the Legislative Assembly Retirement Allowances Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. The Legislative Assembly Retirement Allowances Act, being chapter 236 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:
- 33. An allowance under this Act shall be suspended while Suspension the person entitled thereto is a member of any commission, allowance board, committee or other body holding office at the nomination of the Lieutenant Governor in Council for which any salary, fee or compensation is paid.

- 2. This Act comes into force on the day it receives Royal Commence-Assent.
- 3. The short title of this Act is the Legislative Assembly Short title Retirement Allowances Amendment Act, 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Publi

Bill 141

An Act to amend the Public Service Superannuation Act



1st Reading

October 21st, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to suspend superannuation allowances while a person entitled thereto is receiving any salary, fee or compensation from the Province of Ontario.

Bill 141 1986

An Act to amend the **Public Service Superannuation Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. The Public Service Superannuation Act, being chapter 419 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:
- 44. A superannuation allowance under this Act shall be Suspension suspended while the person entitled thereto,

of superannuation allowance

- (a) is a member of any commission, board, committee or other body holding office at the nomination of the Lieutenant Governor in Council for which any salary, fee or compensation is paid; or
- (b) is employed in the public service.
- 2. This Act comes into force on the day it receives Royal Commence-Assent.
- 3. The short title of this Act is the Public Service Superan-Short title nuation Amendment Act, 1986.



35 ELIZABETH II, 1986

Bill 142

An Act to amend the Ontario Energy Board Act

The Hon. V. Kerrio

Minister of Energy



1st Reading October 23rd, 1986 2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

SECTIONS 1 and 2. These amendments are consequential on the repeal of section 26 of the Act by section 3 of the Bill and the addition of a new Part I-A of the Act by section 4 of the Bill.

SECTION 3. Section 26 of the Act places restrictions on the disposition, by sale, lease or otherwise, of a gas utility and on the acquisition by any person of more than 20 per cent of its shares; these restrictions, somewhat expanded, are now found in section 37b of the Act, as set out in section 4 of the Bill.

SECTION 4. Part I-A is added to the Act to set rules of conduct for gas utilities. New section 37a defines the various terms set out therein, for the purposes of the Part.

New section 37b contains substantially the provisions now found in section 26 of the Act; clause (1) (c) is new, as is subsection (5), permitting the Board to dispense with a public hearing where warranted and subsection (6), authorizing the imposition of terms and conditions.

New section 37c requires that the majority of the directors of a gas utility be not directors, officers or employees of any associate of the utility; this section does not come into force until July 1st, 1987, in order to give time to achieve compliance.

New section 37d requires a utility to file quarterly with the Board a report of all affiliated transactions that occurred in the preceding quarter; the Board is empowered to require the utility to furnish further information or documentation in respect of any such transaction.

New section 37e prohibits a utility from engaging in or investing in another type of business without the approval of the Board; a two-year period is allowed for the utility to either divest itself of the prohibited business or investment or obtain the approval of the Board to its continuance, if such business was entered into between April 9, 1986 and the day upon which this Act receives Royal Assent. The section does not apply to a business entered into prior to April 9, 1986.

New section 37f sets out various matters or activities prohibited to a gas utility without the approval of the Board and is designed to insulate the utility from involvement in, and the risks attendant upon, non-utility business and activities.

New section 37g empowers the Board to impose terms and conditions to an approval granted by the Board under section 37e or 37f and sets out matters to be considered by the Board when determining whether to grant approval under those sections and when determining whether to recommend the leave of the Lieutenant Governor in Council be given under section 37b.

New section 37h provides for investigation by the Board into alleged contraventions of the provisions of the new Part I-A and for an application to the Supreme Court by the Minister for an order, where appropriate, restraining any such contravention or declaring void any transaction entered into in contravention of the Part.

New section 37i provides that an undertaking given by any person in respect of a gas utility prior to the coming into force of the new Part I-A, if inconsistent with any provision of that Part, is of no force or effect; in addition the Board is empowered to dispense with compliance with all or part of such an undertaking if the Board is of the opinion it would be consistent with the public interest to do so.

SECTION 5. The Act, except for the provision respecting directors set out in new section 37c, is deemed to have come into force on April 9th, 1986.

Bill 142 1986

An Act to amend the Ontario Energy Board Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Subsection 13 (2) of the *Ontario Energy Board Act*, being chapter 332 of the Revised Statutes of Ontario, 1980, is amended by striking out "section 26" in the first line and inserting in lieu thereof "section 37b".
- **2.** Subsection 15 (3) of the said Act is amended by inserting after "section 23" in the second line "section 37b".
 - 3. Section 26 of the said Act is repealed.
- **4.** The said Act is amended by adding thereto the following Part:

PART I-A

CONTROL AND CONDUCT OF UTILITIES

37a. In this Part.

Definitions

- "affiliated transaction" means any transaction or transfer or exchange of goods, services or information, whether or not for consideration, between a gas utility and any associate of the gas utility, and includes the provision of a benefit by a gas utility to an associate;
- "associate", when used to indicate a relationship with a person, means,
 - (a) any person who controls such person,
 - (b) any person whom the person controls,
 - (c) another person who is controlled by a person who also controls such person,

- (d) a partner of that person acting by or for the partnership of which they are both partners,
- (e) a trust or estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity,
- (f) a person of the opposite sex to whom the person is married or with whom the person is living in a conjugal relationship outside marriage,
- (g) a son or daughter of the person,
- (h) a relative of the person or of a person mentioned in clause (f), other than a person referred to in clauses (f) and (g), who has the same home as the person, or
- (i) any person who is obliged to act in concert with such person in exercising voting rights in respect of the shares of a company;
- "control", "controlled" and "controlling", in respect of a person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through ownership of voting securities or by contract or otherwise;
- "gas utility" means a person who supplies natural gas to a consumer in Ontario or a person who carries gas by a transmission line in Ontario;
- "security" includes any share of any class or series of shares and any debt obligation, other than one which is payable in full within two years of its creation, of a body corporate;
- "voting share" means any security carrying a voting right under all circumstances or which is convertible into or may be exchanged for such a security.

Leave of L.G. in C.

- **37b.**—(1) No gas utility, without first obtaining the leave of the Lieutenant Governor in Council, shall,
 - (a) sell, lease, convey or otherwise dispose of its transmission, distribution or storage system, or any part thereof that is used or useful in serving the public, as an entirety or substantially as an entirety;
 - (b) merge or amalgamate, or otherwise combine directly or indirectly, with any other company; or

- (c) alone or in conjunction with any associate acquire or hold more than 5 per cent of the voting shares of another gas utility or of a person who controls another gas utility.
- (2) No person, without first obtaining the leave of the Lieutenant Governor in Council, shall acquire such number of votcontrol ing shares of a gas utility that together with shares already held by such person or by such person and an associate or associates of such person will in the aggregate exceed 20 per cent of the voting shares outstanding of that gas utility.

(3) Clause (1) (a) does not apply to a mortgage or charge to Mortgages secure any loan or indebtedness or to secure any bond, debenture or other evidence of indebtedness.

(4) An application for leave under this section shall be Public made to the Board, which shall hold a public hearing and submit its report and opinion with respect to the application to the Lieutenant Governor in Council.

hearing

(5) Notwithstanding subsection (4), the Board may dispense Dispensing with the holding of a public hearing if, after giving or causing with pu to be given public notice of its intention to do so, it is satisfied that the circumstances of the case so warrant and that the dispensation will not adversely affect the public interest.

(6) Any leave granted under this section may be made sub- Terms and ject to such terms and conditions as in the opinion of the Lieutenant Governor in Council are required in the public interest.

conditions

37c. The majority of the members of the board of direc-Directors tors of a gas utility shall be persons who are not directors, officers or employees of an associate of the gas utility.

37d. A gas utility shall quarterly file with the Board a Filing report of all affiliated transactions which took place in the accounts of affiliated immediately preceding quarter, together with such informatransactions tion and documentation relative thereto as the Board requires all of which shall be made public by the Board.

37e.—(1) A gas utility shall not itself or through a person Engaging it controls engage or invest in any business other than that of business a gas utility without the prior approval of the Board.

(2) Subsection (1) shall not apply in respect of a business in Nonwhich a gas utility was engaged on the 9th day of April, 1986 application of subs. (1) or to an investment made by the gas utility prior to that date.

Saving

(3) Where, subsequent to the 9th day of April, 1986 and prior to the day this Act receives Royal Assent, a gas utility engages or invests in a business that requires the approval of the Board under subsection (1), the gas utility may continue the business or investment for a period of two years from the 9th day of April, 1986, without the approval of the Board.

Where approval of Board required

- **37f.** A gas utility shall not, without the prior approval of the Board, directly or indirectly,
 - (a) advance funds or otherwise confer a benefit to or to the order of or for the benefit of an associate;
 - (b) acquire or pay for securities of or held by an associate;
 - (c) become responsible for the indebtedness or obligations of any person; or
 - (d) pay a dividend, or take other action such as redemption or purchase of shares for cancellation, which will result in the common equity component of the gas utility's capital structure falling, and remaining for a period of in excess of ninety days, below the level approved or considered appropriate by the most recent applicable decision of the Board.

Terms and conditions

37g.—(1) The approval of the Board under section 37e or 37f may be made subject to such terms and conditions as in the opinion of the Board are reasonably required in the public interest.

Matters taken into account by Board

- (2) The Board, in considering,
 - (a) under subsection 37b (4) whether to recommend approval and, if so, whether to recommend the attachment of terms and conditions thereto; and
 - (b) under section 37e or 37f whether to grant approval and, if so, whether to attach terms and conditions thereto,

shall take into account all such matters as to it appear relevant, including, but not limited to,

(c) whether the activity or transaction raises actual or potential conflicts of interest with the gas utility business;

- (d) the extent to which the gas utility business and gas utility customers will be protected from potential adverse consequences of the proposed activity or transaction:
- (e) whether the activity or transaction would likely result in the control of a gas utility by a person or persons not ordinarily resident in Canada;
- (f) the potential impact of the proposed activity or transaction on the cost and quality of gas utility service to customers:
- (g) the potential impact of the proposed activity or transaction on the availability and cost of capital for gas utility purposes;
- (h) the potential for inappropriate diversion to nonutility purposes of gas utility assets including cash, human and management resources and information;
- (i) the accounting for and allocation of costs and benefits as between utility and non-utility businesses, and the ease and effectiveness with which the Board will be able to monitor the same:
- (j) the relationship of a proposed new activity or investment to the gas utility business; and
- any public interest that in the Board's opinion may be affected by the granting or the refusing of the application.

37h.—(1) The Board shall monitor compliance by gas Monitoring utilities with the provisions of this Part.

(2) The Board of its own motion may, and at the request of Investigation the Minister shall, investigate and report to the Minister regarding instances of alleged contravention of the provisions of this Part or of any terms and conditions imposed thereunder.

(3) On application to the Supreme Court made on behalf of Application to Supreme the Minister, the Court may make such order as may be necessary to prevent the furtherance or the continuance of a contravention of a provision of, or a term or condition made under, this Part or to declare null and void a transaction entered into in contravention thereof.

Other remedies not affected

(4) Nothing in subsection (2) or (3) limits any remedy that may be available at law to any person or limits the Board in any remedy or course of action otherwise available to the Board under this Act, for a contravention of the provisions of this Part.

Definition

37i.—(1) In this section, "undertaking" means an undertaking in writing given by a person in respect of a gas utility to the Lieutenant Governor in Council before the day this Part comes into force.

Where undertaking inconsistent with Part I-A

(2) To the extent that an undertaking is inconsistent with any of the provisions of this Part, the undertaking shall be deemed to be of no force or effect.

Power of Board to dispense with compliance with undertaking

(3) The Board may, by order, subject to the provisions of this Part, dispense with compliance in whole or in part with an undertaking, if in the opinion of the Board to do so would be consistent with the public interest.

Commencement 5.—(1) This Act, except section 37c of the said Act, as enacted by section 4 of this Act, shall be deemed to have come into force on the 9th day of April, 1986.

Idem

(2) Section 37c of the said Act, as enacted by section 4 of this Act, comes into force on the 1st day of July, 1987.

Short title

6. The short title of this Act is the Ontario Energy Board Amendment Act, 1986.

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 143

An Act to prevent unjust enrichment through the Financial Exploitation of Crime

Ms. Gigantes



1st Reading
2nd Reading
3rd Reading
Royal Assent

October 28th, 1986

EXPLANATORY NOTE

The Bill makes moneys earned by accused criminals from the sale of their memoirs payable to the Criminal Injuries Compensation Board, which uses the funds received in each case to satisfy judgments obtained by victims of the crime.

Bill 143 1986

An Act to prevent unjust enrichment through the Financial Exploitation of Crime

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

"Board" means the Criminal Injuries Compensation Board established under the Compensation for Victims of Crime R.S.O. 1980, Act;

"broadcast" means information transmitted by cables, wires, fibre-optic linkages, laser beams or any form of wireless radioelectric communication employing Hertzian waves;

"person accused or convicted of a crime" includes,

- (a) a person who has been charged with a crime,
- (b) a person who has been convicted of a crime, and
- a person who has admitted the commission of a crime for which the person has not been prosecuted:

"victim" means a person who suffers injury, damage or pecuniary loss as a direct result of a crime.

2.—(1) Every person who makes an agreement with a per-Payments son accused or convicted of a crime, or with the person's agent or assignee, with respect to a book, magazine or newspaper article, broadcast, tape recording, phonograph recording, video recording, live presentation or other representation based upon or concerning the crime shall,

(a) provide the Board with a copy of the contract; and

(b) pay to the Board any moneys which would, under the contract, be payable to the person accused or convicted of the crime, his agent or nominee.

List to be public (2) The Board shall maintain a complete list of all persons in respect of whom it receives moneys under section 2 and shall make the list available to the public upon request.

Board to hold funds **3.**—(1) The Board shall hold all moneys received under section 2 in a special account, which may be an interest-bearing account, shall keep full records as to their source and disbursement and shall deal with the moneys in accordance with this Act.

Interest

(2) Interest earned on moneys received under section 2 forms part of the moneys to be dealt with by the Board in accordance with this Act.

Notice to victims **4.**—(1) Where the Board first receives moneys under section 2 in respect of a particular crime, it shall publish, in a newspaper circulated in the community where the crime was committed or alleged to have been committed, at least once every week for four weeks, a notice advising victims of the crime that it holds the moneys and of their rights under this Act.

Idem

(2) The Board may give such further notice to victims as it considers advisable.

Victim may sue 1986, c. 4 R.S.O. 1980, c. 240

5.—(1) Despite subsection 61 (4) of the Family Law Act, 1986 and section 45 of the Limitations Act, a victim may bring an action for the recovery of damages against the person accused or convicted of the crime within five years after the date on which the Board first received moneys under section 2 in respect of the crime.

Notice to Board

(2) A victim who commences an action for damages against the person accused or convicted of the crime shall provide the Board with a copy of the statement of claim.

Payment to victim **6.**—(1) Where a victim obtains judgment in an action for damages commenced against the person accused or convicted of the crime, the Board, after a day five years and six months after the day the Board first received moneys under this Act, shall pay the amount of the judgment and costs to the victim from the funds it holds under this Act.

Action for damages

(2) Where, on the day named in subsection (1), the Board has notice that a victim has commenced an action for damages against the person accused or convicted of the crime and that

the action has not been finally disposed of, the Board shall not make a payment under subsection (1) until the action has been finally disposed of.

(3) Where the aggregate amount of judgments and costs in When funds respect of a particular crime exceeds the moneys received by the Board in respect of the crime, the Board shall distribute the moneys to the victims on a pro rata basis.

7.—(1) Where, on a day five years and six months after Release of the day the Board first received moneys under this Act in no victim respect of a particular crime, the Board has not been notified sues of an action commenced against the person accused or convicted of the crime during the five-year period described in subsection 5 (1), the Board shall release the moneys to the person accused or convicted of the crime.

(2) Where, after the Board has paid the full amounts of all Balance after judgments and costs payable to victims of a particular crime in satisfied accordance with this Act, the Board retains a balance of moneys received in respect of the crime, the Board shall pay the balance to the person accused or convicted of the crime.

8. Every person who contravenes section 2 of this Act is Penalty guilty of an offence and upon conviction is liable to a fine not exceeding \$5,000.

9. Nothing in this Act affects the power of the Board to Board's award compensation to a victim under the Compensation for R.S.O. 1980, Victims of Crime Act.

10. This Act comes into force on the day it receives Royal Commence-Assent.

11. The short title of this Act is the Profits from Crime Short title Act, 1986.







2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 144

An Act to amend the Pension Benefits Act

Mr. Mackenzie



1st Reading

October 28th, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The new section prevents an employer from taking money out of a pension plan or discontinuing payments into the plan where there is a surplus of money in the plan.

Rill 144 1986

An Act to amend the Pension Benefits Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. The Pension Benefits Act, being chapter 373 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:
- 23a.—(1) The assets and earnings of a pension plan shall Assets of be deemed to be held in trust for the members of the pension benefit plan and no part of those assets or earnings shall be paid to members the benefit of the employer either during the term of the pension plan or upon its termination or winding up.

(2) An employer is not relieved of the obligation to pay money into a pension plan by reason only that the assets and notwithearnings of the pension plan exceed its liabilities.

Contributions to continue. standing surplus

2. This Act comes into force on the day it receives Royal Commence-Assent.

3. The short title of this Act is the Pension Benefits Amend- Short title ment Act, 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 145

An Act to make mandatory the use of Running Lights on Motor Vehicles at all Times on the Highway

Mr. Sterling



1st Reading

October 29th, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

Self-Explanatory

Bill 145 1986

An Act to make mandatory the use of Running Lights on Motor Vehicles at all Times on the Highway

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Subsection 44 (1) of the Highway Traffic Act, being chapter 198 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1984, chapter 61, section 2, is repealed and the following substituted therefor:
- (1) When on a highway at any time, every motor vehicle Lamps other than a motorcycle shall carry three lighted lamps in a on all motor conspicuous position, one on each side of the front of the vehicles vehicle which shall display a white or amber light only and except motorcycles one on the rear of the vehicle which shall display a red light only.

2. This Act comes into force on the day it receives Royal Commencement Assent.

3. The short title of this Act is the Highway Traffic Amend- Short title ment Act, 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 146

An Act to change the name of the geographic township of Stalin to the geographic township of Hansen

Mr. Shymko



1st Reading

October 29th, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

Self-explanatory.

Bill 146 1986

An Act to change the name of the geographic township of Stalin to the geographic township of Hansen

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- **1.** The name of the geographic township of Stalin in the Territorial District of Sudbury is hereby changed to the geographic township of Hansen.
- **2.** Any reference to the geographic township of Stalin in any Act, regulation, by-law, agreement or other document passed, made, entered into or executed before this Act comes into force shall be deemed to be a reference to the geographic township of Hansen.
- **3.** This Act comes into force on the day it receives Royal Commence-Assent.
- **4.** The short title of this Act is the Geographic Township Short title of Hansen Act, 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Dublicat

Bill 146

(Chapter 52 Statutes of Ontario, 1986)

An Act to change the name of the geographic township of Stalin to the geographic township of Hansen

Mr. Shymko



1st Reading October 29th, 1986

November 6th, 1986

2nd Reading 3rd Reading

November 6th, 1986

Royal Assent

November 18th, 1986

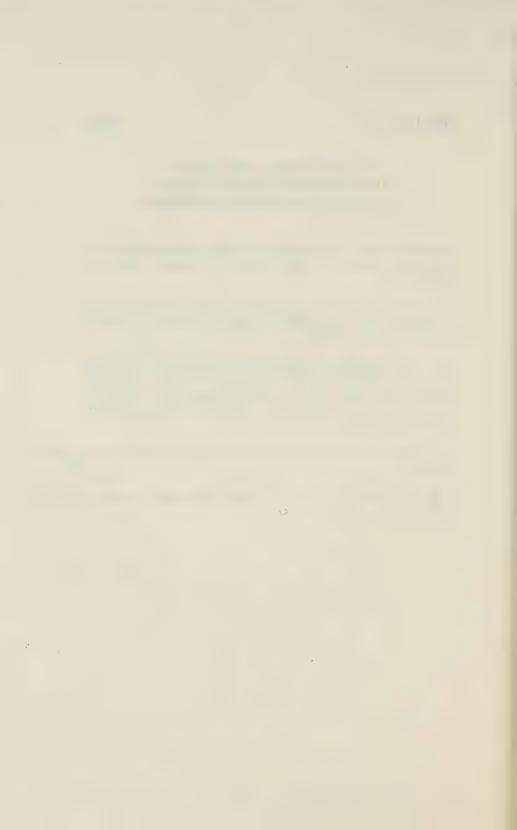


Bill 146 1986

An Act to change the name of the geographic township of Stalin to the geographic township of Hansen

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- **1.** The name of the geographic township of Stalin in the Territorial District of Sudbury is hereby changed to the geographic township of Hansen.
- **2.** Any reference to the geographic township of Stalin in any Act, regulation, by-law, agreement or other document passed, made, entered into or executed before this Act comes into force shall be deemed to be a reference to the geographic township of Hansen.
- **3.** This Act comes into force on the day it receives Royal Commence-Assent.
- **4.** The short title of this Act is the Geographic Township Short title of Hansen Act, 1986.



Bill 147

Government Bill

Publicat

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 147

An Act to amend the Barristers Act

The Hon. I. Scott

Attorney General



1st Reading
2nd Reading
3rd Reading

Royal Assent

November 4th, 1986

EXPLANATORY NOTES

 ${\bf SECTIONS~1}$ and 2. The provisions repealed provide for the appointment of Queen's counsel and their precedence in the courts.

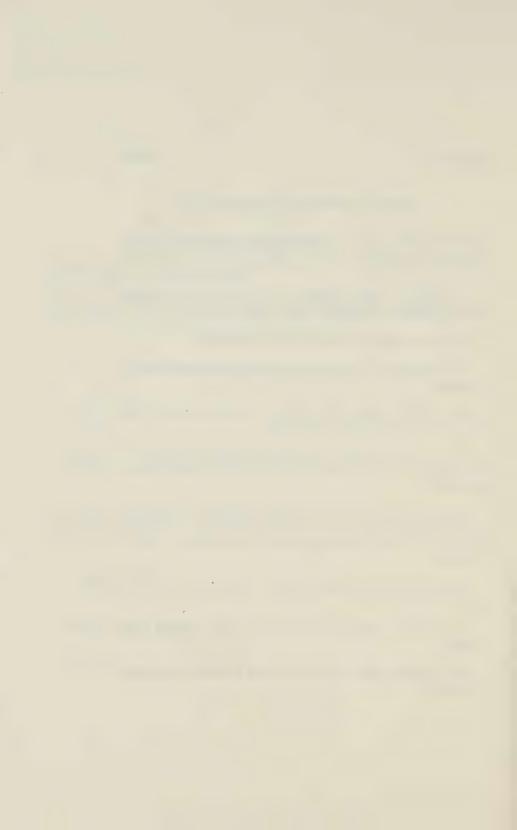
SECTION 3. The common law office of Queen's counsel and the use of the title in the practice of law in Ontario are abolished.

Bill 147 1986

An Act to amend the Barristers Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Section 2 of the *Barristers Act*, being chapter 38 of the Revised Statutes of Ontario, 1980, is repealed.
 - 2. Subsection 3 (3) of the said Act is repealed.
- 3. The said Act is amended by adding thereto the following sections:
- **4.**—(1) The office of Her Majesty's counsel learned in the Q.C.'s law, or Queen's counsel, is abolished.
- (2) All letters patent appointing members of the bar of Patents Ontario to be Her Majesty's counsel learned in the law are cancelled
- **5.**—(1) No person shall represent himself or herself to be one of Her Majesty's counsel learned in the law, or Queen's counsel, or other like designation, in the practice of law in Ontario.
- (2) Subsection (1) comes into force on the 1st day of September, 1987.
- **4.** This Act comes into force on the day it receives Royal Commencement Assent.
- 5. The short title of this Act is the Barristers Amendment Short title Act, 1986.



Private Member's Bill

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 148

An Act to amend the Representation Act, 1986

Mr. Villeneuve

1st Reading
2nd Reading
3rd Reading

Royal Assent

November 17th, 1986

EXPLANATORY NOTE

Self-explanatory.

Bill 148 1986

An Act to amend the Representation Act, 1986

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. The Schedule to the *Representation Act*, 1986, being chapter 30, is amended by renaming "THE ELECTORAL DISTRICT OF STORMONT, DUNDAS AND GLENGARRY" as "THE ELECTORAL DISTRICT OF STORMONT, DUNDAS, GLENGARRY AND EAST GRENVILLE".
- 2. This Act comes into force on the day it receives Royal Commence-Assent.
- 3. The short title of this Act is the Representation Amend-Short title ment Act, 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

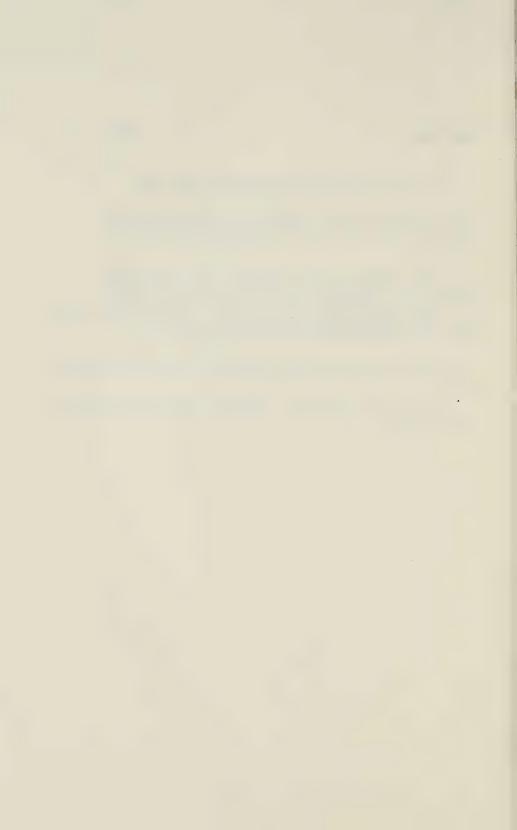
Bill 149

An Act to amend the Occupational Health and Safety Act

Mr. Martel

1st Reading 2nd Reading 3rd Reading Royal Assent November 18th, 1986





2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 149

An Act to amend the Occupational Health and Safety Act

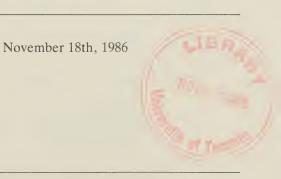
Mr. Martel

1st Reading

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTES

The purpose of the Bill is to provide greater protection for the health and safety of workers. Persons who were formerly excluded from the protection of the Act would now be covered by the repeal of subsections 3 (2) and (3), 8 (1), 23 (1) and (2).

- **SECTION 2.** This section makes substantial changes to section 8 of the Act to give increased powers to the health and safety committee which would be composed of a majority of worker representatives.
- **SECTION 3.** This amendment sets out in detail the nature of information that must be provided by the Director.
- SECTION 4. This amendment clarifies that any protective equipment, material or devices must be provided at the expense of the employer.
- **SECTION 5.** This section makes substantial changes to section 15 of the Act to impose increased duties on an employer in respect of health and safety matters.
- **SECTION 6.** These amendments to section 23 of the Act provide greater protection for the worker when faced with a threat to his or her safety or health.
- **SECTION 7.** The effect of this amendment is to permit a union representative, a worker health and safety representative or any interested person to file a complaint where there has been a reprisal against a worker. At present, only the worker may file a complaint.
- SECTION 8. This amendment would designate an inspector as a provincial offences officer in respect of certain specified violations of the Act.
- SECTION 9. This amendment increases the regulation-making powers of the Lieutenant Governor in Council.

Bill 149 1986

An Act to amend the Occupational Health and Safety Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Subsections 3 (2) and (3) of the Occupational Health and Safety Act, being chapter 321 of the Revised Statutes of Ontario, 1980, are repealed.
 - **2.**—(1) Subsection 8 (1) of the said Act is repealed.
- (2) Subsection 8 (5) of the said Act is amended by striking out "two persons of whom at least half" in the first and second lines and inserting in lieu thereof "three persons of whom the majority".
- (3) Subsection 8 (6) of the said Act is repealed and the following substituted therefor:
 - (6) It is the function of a committee and it has power to,

Powers of

- (a) identify situations that may be a threat to the health or safety of workers and require an owner, constructor or employer to take adequate measures to remove the threat;
- (b) conduct tests as to the work place conditions at the expense of the employer;
- (c) hire independent agencies to conduct tests as to the work place conditions at the expense of the employer but any such agents shall be accompanied by a worker health and safety representative or a worker member of the health and safety committee;
- (d) approve any machinery, chemicals or innovations before they are introduced into the work place;

- (e) approve all protective devices used or worn in the work place by the workers;
- (f) conduct all assessments and develop all control programs that may be required in regulations related to designated substances;
- (g) establish programs to educate and train workers in health and safety procedures;
- (h) upon the request of the workers, establish a voluntary medical monitoring program to be accompanied by work place monitoring at the expense of the employer;
- (i) obtain information from the constructor or employer respecting,
 - (i) the identification of potential or existing hazards of materials, processes or equipment, and
 - (ii) health and safety experience and work practices and standards in similar or other industries of which the constructor or employer has knowledge.
- (4) Subsection 8 (8) of the said Act is amended by striking out "not more often than" in the third and fourth lines and inserting in lieu thereof "at least".
- (5) Subsection 8 (9) of the said Act is repealed and the following substituted therefor:

Power to inspect

- (9) The members of a committee who represent workers shall designate one or more such members to investigate cases where a dangerous situation has been reported by a worker or where a worker is killed or injured at a work place from any cause and one of those members may, subject to subsection 25 (2), inspect the place where the accident occurred and any machine, device or thing, and shall report his or her findings to a Director and to the committee.
- (6) Subsection 8 (12) of the said Act is repealed and the following substituted therefor:

Time off for duties (12) A member of a committee is entitled to such time from work as is necessary to perform and discharge his or her duties under this Act including but not limited to,

- (a) collecting data;
- (b) taking test samples;
- (c) preparing for and attending committee meetings;
- (d) inspecting documents;
- (e) attending training sessions; and
- (f) investigating worker complaints and work place accidents.

and the time so spent shall be deemed to be work time for which the worker is paid at the regular or premium rate, as applicable.

(7) Subsection 8 (13) of the said Act is repealed and the following substituted therefor:

(13) No committee dealing with occupational health and Other safety issues shall be established or continued in a work place unless.

committees

- (a) the committee consists of at least two persons of whom at least half shall be workers who do not exercise managerial functions to be selected by the workers they are to represent or, where there is a trade union or trade unions representing such workers, by the trade union or trade unions;
- (b) the approval of the joint health and safety committee is obtained; and
- (c) the committee takes its directions from and reports to the health and safety committee.
- (8) Section 8 of the said Act is amended by adding thereto the following subsection:
- (15) Employers, supervisors and workers shall answer all Duties questions and provide any information required for the purpose of carrying out an investigation under subsection (9).

- 3. Section 9 of the said Act is amended by adding thereto the following subsection:
- (4) The information referred to in subsection (3) includes Nature of all government-conducted tests, studies, reports and correspondence related to work place health and safety.

- **4.** Clause 14 (1) (a) of the said Act is repealed and the following substituted therefor:
 - (a) the equipment, materials and protective devices as prescribed are provided at the expense of the employer.
- 5.—(1) Subsection 15 (1) of the said Act is amended by striking out "and" at the end of clause (h) and by adding thereto the following clauses:
 - (j) provide, at the employer's expense, office space, equipment and clerical assistance to enable the health and safety committee to carry out their functions;
 - (k) provide, at the employer's expense, at least one week per year time off for worker representatives and worker members of the health and safety committee to receive training in occupational health and safety measures;
 - (l) provide, at the employer's expense and during working hours, the opportunity for probationary workers to receive education and training in health and safety by a worker representative; and
 - (m) bear the cost of any medical monitoring program including compensating a worker for the time spent visiting his or her doctor and any expense incurred in the course of the visit.
- (2) Section 15 of the said Act is amended by adding thereto the following subsections:

Reassignment

(3) An employer shall ensure that a worker does not suffer any wage loss as a result of being reassigned other duties for health reasons.

Alternative work

- (4) Where a reassignment is not possible, an employer shall, at the employer's expense, retrain workers and find them alternative work elsewhere and make up for any wage loss that results from such transfer.
- **6.**—(1) Subsection 23 (1), as amended by the Statutes of Ontario, 1984, chapter 55, section 224, and subsection (2) of the said Act are repealed.
- (2) Subsection 23 (3) of the said Act is repealed and the following substituted therefor:

(3) A worker may refuse to work or do particular work Refusal where the worker has reason to believe that his or her health or safety or that of any person is in danger for whatever cause.

- (3) Section 23 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 55, section 224, is further amended by adding thereto the following subsection:
- (5a) A worker representative on the health and safety com- Powers of mittee may.

representatives

- (a) exercise, on behalf of the worker, his or her right to refuse to work under dangerous conditions; and
- (b) order that unsafe operations be shut down where it appears that the health or safety of a worker is threatened.
- (4) Subsection 23 (6) of the said Act is repealed and the following substituted therefor:
- (6) Where, following the investigation or any steps taken to Refusal to deal with the circumstances that caused the worker to refuse work and investigation to work or do particular work, the worker has reasonable grounds to believe that his or her health or safety continues to be endangered for whatever cause, the worker may refuse to work or do the particular work and the employer or worker or a person on behalf of the employer or worker shall notify an inspector thereof.

- (5) Section 23 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 55, section 224, is further amended by adding thereto the following subsections:
- (6a) All workers affected by a work stoppage under this Wages section are entitled to full wages and benefits during the work stoppage.

during work stoppage

(6b) Any loss of production or revenue that results from a Loss from work stoppage under this section shall be borne by the stoppage employer.

- 7. Subsection 24 (2) of the said Act is amended by inserting after "worker" in the first line "union representative, worker health and safety representative, or any interested party".
- 8. Section 28 of the said Act is amended by adding thereto the following subsection:

Inspector designated provincial offences officer R.S.O. 1980, c. 400

- (1a) An inspector is designated as a provincial offences officer under the *Provincial Offences Act* and may issue a certificate of offence under that Act in respect of the following offences, namely,
 - (a) failure to establish a health and safety committee under subsection 8 (2);
 - (b) failure to post a copy of this Act as required under clause 14 (2) (h); or
 - (c) failure to provide the information required under clause 8 (6) (i) or the report required under section 25 or 26.
- **9.** Subsection 41 (2) of the said Act is amended by striking out "and" at the end of paragraph 22 and by adding thereto the following paragraphs:
 - 24. establishing time limits for an employer to comply with recommendations made by the health and safety committee;
 - 25. prescribing a code of practice respecting the procedure of a health and safety committee;
 - 26. establishing a joint committee composed of representatives of management and labour to recommend changes to the regulations.

Commencement

10. This Act comes into force on the day it receives Royal Assent.

Short title

11. The short title of this Act is the Occupational Health and Safety Amendment Act, 1986.

35 ELIZABETH II, 1986

Bill 150

An Act to regulate Truck Transportation

The Hon. E. Fulton

Minister of Transportation and Communications

1st Reading 2nd Reading 3rd Reading Royal Assent November 19th, 1986



EXPLANATORY NOTES

The Bill introduces reform of the regulation of for hire trucking in Ontario. The new Act will replace the *Public Commercial Vehicles Act* and is complemented by the *Highway Traffic Amendment Act*, 1986 and the *Ontario Highway Transport Board Amendment Act*, 1986.

The Bill changes the entry test from an examination of the need for additional service to an examination of the fitness of the applicant.

In order to obtain a licence under the new Act, all applicants must pass a fitness test. At the time of the application, the applicant or an employee must hold a Certificate of Competency which will be obtained by passing a written test. This test will cover that prospective truckers have knowledge of safe truck operation, trucking legislation, safety, insurance requirements and maintenance practices. Another factor will be the applicant's past performance record.

For the first five years, the fitness test will be supplemented by a public interest test. This test will take the form of a public hearing and will be used only when any interested party can demonstrate that granting the licence would have significant detrimental effect on the public interest.

The Bill also provides for the establishment of an Advisory Committee on Truck Transportation. The Minister will appoint members of the committee drawing from Government, the OHTB, shippers and carriers. The committee will advise the Minister on the effectiveness of the new Act and, in particular, on the need for continuing the public interest test beyond five years.

Bill 150 1986

An Act to regulate Truck Transportation

CONTENTS

Section

- 1. Definitions
- 2. Purpose
- 3. Operating licence required to transport goods for compensation
- 4. Minister to issue licences
- 5. Licence not transferable
- 6. Requirements for licence
- 7. Notice of intention to issue licence
- 8. Temporary licence
- 9. Public interest test
- 10. Matters considered in public interest test
- 11. Certificate of intercorporate exemption
- 12. Notification of change re intercorporate exemption
- 13. Trip permit
- 14. Commercial zones
- 15. Prohibited service
- 16. Certificate of competency required
- 17. Licence to be carried
- 18. Publishing tariffs
- 19. Bill of lading
- 20. Insurance
- 21. Direction to stop
- 22. Examination by officer

Section

- 23. Examination of records
- 24. Investigation
- 25. Copies
- 26. Cancellation or amendment of certificate
- 27. Cancellation of licence
- 28. Notice of proposal to cancel, etc.
- 29. Referral to Board
- 30. Confidentiality
- 31. Cancellation of licence by Board
- 32. Penalty
- 33. Licensee vicariously liable
- 34. Consent to prosecute
- 35. Advisory Committee on Truck Transportation
- 36. Policy statements
- 37. Ministerial directions to investigate
- 38. Where Ontario Highway
 Transport Board Act does not apply
- 39. One valid licence only
- 40. Regulations
- 41. Transition
- 42. Repeal
- 43. Commencement
- 44. Short title

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Definitions

"Board" means the Ontario Highway Transport Board;

"commercial motor vehicle" means a motor vehicle with a permanently attached truck or delivery body and includes a truck tractor used for hauling purposes, but does not include an ambulance, hearse, casket wagon, fire apparatus, bus or motor vehicle commonly known as a tow truck when the tow truck is being used as a tow truck;

"commercial vehicle" means,

- (a) a commercial motor vehicle or a combination of a commercial motor vehicle and trailer or trailers as defined in the *Highway Traffic Act*,
- (b) a dual-purpose vehicle or a combination of a dualpurpose vehicle and a trailer as defined in the Highway Traffic Act, or
- (c) the combination of a motor vehicle, as defined in the *Highway Traffic Act*, drawing a trailer or trailers, as defined in that Act;
- "Committee" means the Advisory Committee on Truck Transportation;
- "compensation" includes any rate, remuneration, reimbursement or reward of any kind paid, payable or promised, or received or demanded, directly or indirectly;
- "dual-purpose vehicle" means a motor vehicle, other than one commonly known as a passenger car, designed by the manufacturer for the transportation of persons and goods;
- "goods" includes all classes of materials, wares and merchandise and live stock;
- "highway" means a highway as defined in the *Highway Traffic*Act;
- "licensee" means the holder of an operating licence issued under this Act;
- "Minister" means the Minister of Transportation and Communications;
- "Ministry" means the Ministry of Transportation and Communications;
- "officer" means a member of the Ontario Provincial Police Force or an officer of the Ministry designated in writing by the Minister to assist in the enforcement of this Act;
- "operate" means to cause to be driven on a highway and "operated" has a corresponding meaning;

R.S.O. 1980, c. 198

- "operating authority" means a specific authority to operate that is contained within an operating licence;
- "operating licence" means an operating licence issued under this Act containing one or more operating authorities;
- "owner" means the person in whose name the vehicle portion of a permit is issued for a motor vehicle under the *Highway* R.S.O. 1980, *Traffic Act*;
- "prescribed" means prescribed by the regulations;
- "public truck" means a commercial motor vehicle or the combination of a commercial motor vehicle and trailer or trailers drawn by it, operated by the holder of an operating licence:
- "regulations" means the regulations made under this Act;
- "road construction materials" means rubble carried to or from a construction or demolition site and 01 928 — animal or poultry manure, 14 1 — dimension stone, quarry, 14 219 broken or crushed stone or riprap, not elsewhere classified, excluding ground or otherwise treated, 14 41 — gravel or sand, excluding abrasive, 14 715 — rock salt, crude, crushed, lump or screened, excluding sodium chloride (common salt), 14 719 — chemical or fertilizer minerals, not elsewhere classified, excluding ground or otherwise treated, 14 919 — non metallic minerals, not elsewhere classified, loam, soil or topsoil, not elsewhere classified, excluding ground or otherwise treated at mine site or fuels. 28 126 32 — calcium chloride, liquid, 28 126 33 — calcium chloride, other than liquid, 28 181 7 — urea, other than liquor or liquid, 28 71 — fertilizers excluding milled, mined or otherwise prepared, natural boron, sodium or potassium compounds, 29 116 — asphalt pitches or tars, petroleum, coal tar, coke oven or natural gas, 32 952 15 — cinders, clay, shale (expanded shale), slate or volcanic (not pumice stone) or haydite, 33 112 — furnace slag, excluding ground or otherwise treated;
- "STCC" means the Standard Transportation Commodity Code filed with the Canadian Transport Commission;
- "STCC number" means a number in STCC representing the goods or materials classified under that number;
- "toll" means any fee or rate charged, levied or collected for the transportation of goods in or on a public truck.

Idem

(2) Where, in this Act or the regulations, a reference to goods or materials is preceded by a STCC number, the goods or materials referred to are those indicated in the STCC by reference to that number.

Purpose

- 2. It is hereby declared that an effective goods movement system by highway is essential to advance the interests of the users of transportation and to maintain the economic wellbeing and growth of Ontario and that these objectives are to be achieved by the regulatory scheme established by this Act which is to be interpreted so as to advance the objective that the system will,
 - (a) foster productive, fair and innovative competition and the existence of a dependable and viable trucking industry in furtherance of the public interest; and
 - (b) be of benefit to the users of transportation services and not for the protection from competition of individual providers of such services.

Operating licence required to transport goods for compensation

- **3.**—(1) No person shall operate a commercial vehicle to carry goods of any other person for compensation unless it is done.
 - (a) under an operating licence held by the person operating the vehicle; and
 - (b) pursuant to the licence.

General authority

(2) Every operating licence authorizes the holder thereof to carry 01 928 1 — unprepared manure from animal, bird, dog, fowl, goat, sheep or guano, 14 719 — chemical or fertilizer minerals, not elsewhere classified in STCC, 28 181 70 — urea, other than liquid and 28 71 — fertilizers in bulk to or from any point within Ontario during April, May and June in a commercial vehicle that is not a tank vehicle.

Owner-driver licence, single-source licence limitations (3) An operating licence that is an owner-driver or single-source operating authority authorizes the operation of a commercial vehicle to carry goods for compensation only when a notice of the contract under which the particular vehicle is being operated has been filed with the Ministry as prescribed.

Exception

- (4) Subsection (1) does not apply to prohibit the carriage of,
 - (a) goods solely within a commercial zone designated under section 14 or an urban municipality;

- (b) fresh fruit and fresh vegetables grown in continental United States of America or Mexico:
- (c) goods used on farms and farm products that are 01 1 — field crops, 01 2 — fresh fruits or tree nuts, 01 3 — fresh vegetables, 01 91 — horticultural specialities, 01 99 — farm products, not elsewhere classified in STCC, 01 41 — live stock and 01 92 — animal specialities that are carried in a commercial motor vehicle equipped with not more than three axles that does not draw a trailer:
- 01 421 10 milk, fresh, unprocessed and 20 261 bulk fluid milk, skim milk or cream carried on behalf of The Ontario Milk Marketing Board;
- (e) wheat by a person appointed to act as agent for the Ontario Wheat Producers' Marketing Board where the wheat is being carried from the agent's premises in a commercial vehicle registered in the agent's name:
- (f) ready mixed concrete;
- (g) 24 1 primary forest or raw wood materials that are the products of the forest from which they are being carried;
- goods carried by an operator of a commercial vehicle if the goods have been sold, bought, produced, transformed or repaired by, or have been lent, borrowed, given or leased by, the operator as an integral part of the operator's primary business which business is not the operation of public trucks;
- (i) goods in a bus being operated under the authority of an operating licence issued under the Public R.S.O. 1980, Vehicles Act; or
- (i) goods in a commercial vehicle on or before the 1st day of January, 1989, where the carriage would have been exempt under the Public Commercial R.S.O. 1980, Vehicles Act.
- (5) Subsection (1) does not apply to a holder of a certificate Idem, of intercorporate exemption or any affiliated corporation intercornamed in the certificate carrying goods owned by any of them porate pursuant to the certificate.

Idem, trip permit

(6) Subsection (1) does not apply to the holder of a trip permit operating the commercial vehicle specified therein in accordance with the permit.

Transportation for compensation

(7) Where goods are carried in a commercial vehicle that is not owned by the owner of the goods and compensation is received for the use of the vehicle other than in accordance with a lease of the vehicle, the goods shall be deemed to be carried for compensation.

Idem

- (8) Where goods are carried in a commercial vehicle that is leased by the owner of the goods but the lessor of the vehicle, directly or indirectly,
 - (a) engages or pays the driver of the vehicle;
 - (b) exercises control over the driver of the vehicle in the course of his employment as driver; or
 - (c) assumes responsibility for the goods,

the goods shall be deemed to be carried for compensation.

Definition, lease

(9) For the purpose of this section, "lease" means a written agreement setting out fully and accurately all provisions under which the vehicle is leased and giving the lessee exclusive possession and control over the vehicle throughout the entire term of the agreement.

Offence

- (10) Every person who contravenes subsection (1) is guilty of an offence and,
 - (a) on the first conviction, is liable to a fine of not less than \$250 and not more than \$5,000; and
 - (b) on each subsequent conviction, is liable to a fine of not less than \$500 and not more than \$5,000.

Idem

(11) For the purposes of subsection (10), a conviction that occurs more than five years after a previous conviction is not a subsequent conviction.

Minister to issue licences

4.—(1) Operating licences shall be issued by the Minister in accordance with this Act and the regulations.

Special licences

- (2) The Minister may issue an operating licence containing a class of operating authority that is,
 - (a) a single-source authority authorizing the licensee to provide,

- (i) commercial vehicles of which the licensee is the owner or lessee, and
- (ii) drivers for the vehicles referred to in subclause (i).

under one or more contracts; or

- (b) an owner-driver authority authorizing the licensee to provide,
 - (i) one commercial vehicle of which the licensee is the owner or lessee, and
 - (ii) a driver for the vehicle referred to in subclause (i),

under one contract at any given time.

(3) No person shall hold,

Limit on authorities

- (a) more than one owner-driver authority at the same time: or
- (b) an owner-driver authority and a single-source authority other than a single-source authority granted under section 8.
- (4) The Minister, where it is in the public interest to do so, Special may grant a special authority to any licensee which, for the purpose of subsection 3 (1), shall be deemed to be part of that licensee's operating licence, subject to the conditions set out in the special authority, for seven days or such shorter time as is set out in the special authority.

(5) When granting an operating authority, the Minister may Subject to make the authority subject to such provisions and limitations as the Minister considers in the public interest, and, when there has been a public interest test hearing conducted by the Board, the Minister shall make the authority subject to such provisions and limitations as are recommended by the Board.

(6) Provisions or limitations imposed under subsection (5) Exception shall not serve to limit the number of commercial vehicles operated under an operating authority except where the authority is,

- (a) a single-source authority;
- (b) an owner-driver authority;

- (c) granted after a hearing conducting a public interest test; or
- (d) for the carriage of road construction materials,

and shall not be inconsistent with any provision in this Act or the regulations.

Vehicle certificates limiting number of vehicles

- (7) The Minister,
 - (a) when granting an operating authority limiting the number of vehicles that may be operated under the authority; or
 - (b) with respect to the holder of an operating authority for carriage of road construction materials issued under the *Public Commercial Vehicles Act*,

R.S.O. 1980, c. 407

> shall issue vehicle certificates in a number not exceeding the number of vehicles permitted to be operated under the authority.

Limit on vehicles under contract (8) No holder of a single-source authority or an ownerdriver authority shall have more commercial vehicles under contract at any time than the number of vehicle certificates held under the authority.

Vehicle certificate

(9) A vehicle certificate shall state the relevant operating authority.

Expiry

- (10) An operating licence may be issued to expire
 - (a) at the end of a specified term;
 - (b) upon a specified day; or
 - (c) upon the occurrence of a specified event.

Idem

(11) Where the holder of an operating licence fails to file a return or statement required to be filed by the regulations, the licence expires on the day the return or statement was to be filed notwithstanding that a different day may be shown on or indicated by the licence.

Notice of change

(12) Where the name or address of a holder of an operating licence changes from that set out in the application for the licence or a previous notice of change, the holder shall file, with the Minister, a notice of the change within fifteen days after the change.

(13) Every licensee who does not maintain a place of busi- Ontario ness in Ontario shall designate and maintain a person resident in Ontario as an agent of the licensee for the purposes of this Act and to accept service for and on behalf of the licensee.

Bill 150

(14) For the purpose of subsection (2), a "contract" means Definition, a contract, for a period of at least thirty consecutive days, that gives the licensee the right to carry goods of the other party to the contract, which goods are under the control of the other party, and prohibits the licensee from using the vehicle specified in the contract from carrying goods on the licensee's behalf or for a person who is not the other party to the contract.

5.—(1) Operating licences and operating authorities are Licence not not transferable.

transferable

(2) Where a licensee, who is an individual, dies, the executor or administrator of the estate of the deceased may carry on the business of the deceased in accordance with the operating licence for not more than six months after the death.

(3) The directors of a corporate licensee shall report forth- Change in with to the Minister,

control of corporation

- (a) every issue or transfer of shares of its capital stock or change in beneficial ownership thereof; or
- (b) an amalgamation,

that may affect control of the operations of the corporation.

(4) Every licensee shall report to the Minister any arrangement whereby any part of the transportation service authorized is controlled in any way by a person other than the control licensee.

Where licensee business

(5) The report referred to in subsection (4) is not required where the arrangement is a contract of the nature referred to in subsection 4 (2).

Exception to subs.(4)

6.—(1) An operating licence shall not be issued or an operating authority granted unless the applicant demonstrates fitness to carry on the business of carrying goods for compensation as described in the application for the licence.

Requirements

(2) An operating licence shall not be issued to an applicant Idem who does not hold a certificate of competency or whose application is not co-signed by an employee who holds such a certificate.

Corridor licence (3) Notwithstanding subsections (1) and (2), every applicant for an operating licence who is authorized to operate a commercial vehicle to carry goods of another person for compensation in a jurisdiction other than Ontario is entitled to an operating licence that permits the licensee to carry goods through Ontario provided the goods are not picked up or dropped off in Ontario.

Idem

- (4) Every applicant for an operating licence, except an applicant for a licence under subsection (3), shall file with the Minister, with respect to the business for which authority is sought, a description of the proposed transportation service and evidence that the applicant,
 - (a) is not an undischarged bankrupt;
 - (b) is insurable; and

R.S.O. 1980, c. 198 (c) holds a Commercial Vehicle Operator's Registration Certificate issued under the *Highway Traffic Act* that is not under suspension or subject to a fleet limitation.

Matters to be considered

R.S.O. 1980,

cc. 198, 407, 83, 141, 137

1981, cc. 59,

R.S.C. 1970,

cc. M-14, C-34, L-1

- (5) In determining the fitness of an applicant, the Minister shall consider,
 - the past conduct of the applicant or, where the applicant is a corporation, of its officers and directors, including the applicant's safety, financial integrity and customer service record and record of convictions available to the Minister under this Act and the Highway Traffic Act, Public Commercial Vehicles Act, Motor Vehicle Transport Act (Canada), Compulsory Automobile Insurance Act, Environmental Protection Act, Employment Standards Act, Fuel Tax Act, 1981, Dangerous Goods Transportation Act, 1981, Criminal Code (Canada), Canada Labour Code, Transportation of Dangerous Goods Act (Canada), and the regulations thereunder and such other statutes as may be prescribed. and comparable statutes and regulations of other jurisdictions that afford reasonable grounds for belief that the transportation service will not be operated in accordance with the law and the public interest; and
 - (b) such other matters as are prescribed.

Exception to subs.(2)

(6) Subsection (2) does not apply where the application is for a licence to carry goods of a nature and on a scale that had

been exempt under the Public Commercial Vehicles Act and R.S.O. 1980, the applicant was engaged in that transportation during the six months immediately preceding the 1st day of July, 1987.

7.—(1) On being satisfied of the fitness of an applicant to Notice of hold a licence, the Minister shall give thirty days notice of the issue licence intention to issue an operating licence to the applicant by publication in The Ontario Gazette.

intention to

(2) Subsection (1) does not apply to an operating licence Exception restricted to an operating authority issued under subsection 6 (3) (corridor licence).

- (3) Any person may, within the thirty-day period referred Hearing to in subsection (1), file with the Minister a written request that.
 - (a) where there is an allegation that false information was given to the Minister by the applicant, the Minister hold a hearing to determine the fitness of an applicant; or
 - (b) the Board hold a hearing to conduct a public interest test.

(4) Where a request is made under clause (3) (a) that the Idem Minister, in his or her absolute discretion, does not consider merely frivolous or vexatious, the Minister shall hold the hearing requested, which hearing shall be limited to the allegation that false information was given.

(5) Where the Minister finds, after a hearing under subsec- Reassessing tion (4), that false information was given, the Minister shall reassess the question of the applicant's fitness to hold a licence.

(6) Where subsection (7) does not apply and no request is Issue of made under clause (3) (b), and the Minister continues to be satisfied that the applicant is fit to hold the licence, the Minister shall issue the licence applied for.

(7) The Minister may direct the Board to hold a public At Minister's interest test and, where the Minister so directs, the Board shall hold the hearing.

(8) Where a request is made under clause (3) (b), the Idem, Board shall, subject to section 9, hold the hearing requested.

by Board

Determine fitness first (9) A hearing to conduct a public interest test shall not be held until a final determination has been made that the fitness of the applicant has been demonstrated.

Exception

- (10) The requirement to hold a hearing to conduct a public interest test does not apply where the application is for an owner-driver authority or an operating authority to carry,
 - (a) waste or scrap being 40 29 miscellaneous waste or scrap; or
 - (b) farm products being 01 1 field crops, 01 2 fresh fruits or tree nuts, 01 3 fresh vegetables, 01 91 horticultural specialities and 01 99 farm products, not elsewhere classified in STCC.

Idem

c. 407

R.S.O. 1980.

(11) The requirement to hold a hearing to conduct a public interest test does not apply where the applicant holds an operating licence issued under the *Public Commercial Vehicles Act* after the 20th day of June, 1983 and the authority applied for does not exceed that which would be contained in that licence if it had been issued pursuant to a rewritten certificate under section 10b of the *Public Commercial Vehicles Act*.

Stay of licence

(12) Where a request for a hearing is made in respect of an application, the operating authority applied for shall not be granted until the hearing is completed or there has been a final disposition of the rejection of the request.

Application of cl. (3) (b) and subs. (7)

(13) Clause (3) (b) and subsection (7) cease to apply five years after coming into force.

Temporary licence **8.** Where the Minister is satisfied that the circumstances warrant it and that it is in the public interest to do so, the Minister may, notwithstanding subsections 6 (1) and 7 (12), issue an operating licence or grant an operating authority that is valid for not more than twelve months.

Public interest test **9.**—(1) A hearing to conduct a public interest test pursuant to a request under clause 7 (3) (b) shall be held only where the person who asked for the test makes out a written case to the Board that the granting of the operating authority applied for will have a significant detrimental effect on the public interest.

Idem

(2) A hearing to conduct a public interest test pursuant to the direction of the Minister shall be held only after the Minister has published, in *The Ontario Gazette*, the reasons for wanting the hearing.

(3) In a hearing where a public interest test is conducted, Burden of the burden of proof is,

- (a) where the hearing is initiated by the Minister, on the applicant for the operating authority; or
- (b) where the hearing is as a result of a request under clause 7 (3) (b), on the person making the request.
- (4) Before holding a hearing under this section, the Board Notice to shall give the Minister fifteen days notice thereof.

Minister

(5) If the Minister is of the opinion that the subject-matter Provincial of a hearing of which the Minister receives notice is or is likely to be a matter of provincial interest, the Minister shall so advise the Board in writing together with the reasons before the day fixed by the Board for the hearing and, where that is done, may direct the Board.

- (a) to postpone the hearing until thirty days after the day fixed; or
- (b) to examine and investigate such matters relating to transportation policy as are referred to it by the Minister, to report thereon to the Minister and to postpone the hearing until thirty days after the date of the report.
- (6) The Board, where it holds a hearing after it has been advised that the provincial interest may be involved, shall, as part of that hearing, consider and give effect to every policy statement issued by the Lieutenant Governor in Council related to the provincial interest identified.

statements

(7) Where the Lieutenant Governor in Council is of the Review of opinion that the Board has failed to give effect to policy statements as required under subsection (6), the Lieutenant Governor in Council may give notice thereof with particulars to the Board within thirty days after the date of the decision of the Board and the Board shall review its decision and may amend its decision

(8) Where the Lieutenant Governor in Council is of the Substituting opinion that the Board has failed to give effect to policy statements in a review, the Lieutenant Governor in Council may give notice thereof to the Board within thirty days after the review and may substitute the decision of the Lieutenant Governor in Council for all or any part of the decision of the Board.

Matters considered in public interest test

- 10.—(1) In a hearing to conduct a public interest test, the Board shall determine whether granting the operating authority applied for, as set out in the material filed under subsection 6 (4), would have a significant detrimental effect on the public interest in relation to the market proposed to be served by investigating whether there would be significant adverse impact on the following:
 - 1. The existence of a dependable and viable trucking industry.
 - 2. The availability of appropriate trucking services to shippers.
 - 3. The ultimate Ontario consumers of goods and services.
 - 4. Overall or net effect on employment within Ontario and the gross provincial product.
 - 5. The public interest as set out by the Lieutenant Governor in Council in policy statements issued under section 36.

Board report

- (2) Where, after a hearing to conduct a public interest test, the Board finds that granting the operating authority applied for, subject to any limitations or variations recommended by the Board, will not have a significant detrimental effect on the public interest in the market proposed to be served, the Board shall so report to the Minister and recommend that the Minister,
 - (a) grant the authority applied for;
 - (b) grant the authority applied for subject to a limit on the number of commercial vehicles authorized to be operated thereunder in the first, second, third and fourth years following the issuing of the licence; or
 - (c) where the issue of provincial interest has been raised under subsection 9 (5), issue an operating licence with provisions that vary from those applied for.

Issuing licence

(3) Upon receiving a report under subsection (2), the Minister shall issue a licence in the terms recommended by the Board.

(4) The issue of any licence under subsection (3) may be Deferred delayed for up to six months after the Board's decision if the Board so recommends.

11.—(1) The Minister shall issue a certificate of intercor- Certificate of porate exemption to every applicant therefor who is not precluded from receiving it by subsection (2).

exemption

(2) A certificate of intercorporate exemption shall not be Where not issued.

to be issued

- (a) to a licensee; or
- (b) to a corporation that does not show on the application an affiliated corporation,

and shall not name therein an affiliated corporation that holds an operating licence.

(3) The Minister may, in a certificate of intercorporate Conditions in exemption, set out such conditions and limitations as the Minister sees fit to govern the carriage of goods under the certificate.

certificate

(4) For the purpose of this Act, a corporation is an affiliate Affiliate of another corporation if one of them is the subsidiary of the other, if both are subsidiaries of the same corporation or if each is controlled by the same individual or corporation.

(5) For the purpose of subsection (4), a corporation is controlled by an individual corporation or group of corporations if,

- (a) voting securities of the corporation carrying more than 90 per cent of the votes for the election of director are held, otherwise than by way of security only, by or for the benefit of the other person or group of persons;
- (b) the votes carried by the securities referred to in clause (a) are entitled, if exercised, to elect all members of the board of directors of the corporation.
- (6) For the purpose of subsection (4), a corporation is a Subsidiary subsidiary of another corporation if,
 - (a) it is controlled by,
 - (i) the other corporation,

- (ii) the other corporation and one or more corporations each of which is controlled by that other corporation, or
- (iii) two or more corporations each of which is controlled by the other corporation; or
- (b) it is a subsidiary of a corporation that is the other corporation's subsidiary.

Notification of change re intercorporate exemption **12.**—(1) Every holder of a certificate of intercorporate exemption shall notify the Minister of any change in the facts set out in the certificate within thirty days after the change.

Offence

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not less than \$500 and not more than \$5,000.

Trip permit **13.**—(1) Subject to subsection (3), the Minister shall issue a trip permit to every applicant therefor.

Idem

- (2) Every trip permit shall,
 - (a) specify the trip and vehicle, including drawn vehicles if any, for which it applies; and
 - (b) be subject to the conditions set out therein.

Limit of three permits

(3) No more than three trip permits may be issued to one person within any twelve-month period.

Commercial zones

14.—(1) The Minister may designate commercial zones and may vary the boundaries of a commercial zone but, where the Minister does so, it shall be done only in accordance with the recommendations of the Board.

Referral to Board (2) Where the Minister proposes to designate a commercial zone or to vary the boundaries of a commercial zone, he shall refer the proposal to the Board and the Board shall hold a public hearing and report thereon to the Minister with its recommendations.

Second hearing (3) The Minister may require the Board to hold a second public hearing in respect of all or any part of a proposal that has been reported on under subsection (2) and to again report thereon to the Minister with its recommendations.

Matter for the Board to consider (4) In determining whether to recommend the designation of a commercial zone, the Board shall consider whether the public interest will be served thereby.

(5) In considering public interest, the Board shall take into Public account the impact on the users of for hire transportation services within the proposed zone and on the providers of the services

(6) In considering the impact on the providers of services, Idem the Board shall take into account the impact on those to whom this Act does not apply, who are operating exclusively within the proposed zone and on licensees who would be affected thereby.

15.—(1) No person shall knowingly hire, directly or indi-Prohibited rectly, or participate in an arrangement to hire a person to arranging carry goods where the services would be carried out in contravention of subsection 3 (1).

(2) No person shall,

Prohibited service performing

- (a) hold himself out as willing to; or
- (b) undertake to,

arrange to carry goods where the service would be carried out in contravention of subsection 3 (1).

16.—(1) No licensee shall carry goods under the authority Certificate of an operating licence unless the licensee or an employee of competency the licensee holds a certificate of competency and, where the required regulations so require, such greater number of employees as are indicated by the regulations hold a certificate of competency.

(2) In every situation where the regulations require more than one certificate holder, the licensee is permitted ninety days in which to effect compliance.

Delayed

(3) Every licensee, who ceases to meet the requirements Idem referred to in subsection (1) because of the termination of employment of an employee who holds a certificate of competency, shall be deemed to meet the requirements for ninety days after the termination.

(4) An employee holding a certificate of competency may Limited use be counted for one licensee only when determining whether the requirements of subsection (1) are met except where the licensees are affiliated corporations.

(5) Every licensee shall notify the Minister within fifteen Change in days after a change in certificate holders whose employment is certificate holders

relied on to satisfy the requirements of subsection (1) of the change.

Exception

(6) Subsection (1) does not apply to an executor or administrator of an estate carrying on business in accordance with subsection 5 (2).

Idem

(7) Every licensee who holds an operating licence issued,

R.S.O. 1980, c. 407

- (a) under section 10b of the *Public Commercial* Vehicles Act:
- (b) under the *Public Commercial Vehicles Act* after the 20th day of June, 1983 in respect of goods to be transported before the 1st day of January, 1989; or
- (c) under subsection 6 (3) (corridor licence),

is exempt from the application of subsection (1).

Idem R.S.O. 1980, c. 407

(8) Every licensee whose authority is limited to the carriage of goods that were exempt under the *Public Commercial Vehicles Act* or to the carriage between points that were within an urban zone under that Act is exempt from the application of subsection (1).

Licence to be carried 17.—(1) Every person driving a public truck on a highway shall carry or keep, in a readily accessible place in the vehicle, a copy of the operating licence under which the vehicle is being operated and shall surrender the copy for inspection upon the demand of an officer.

Certificate of intercorporate exemption to be carried

- (2) Every driver of a commercial vehicle that is being operated under a certificate of intercorporate exemption shall carry or keep in a readily accessible place in the vehicle,
 - (a) the certificate or a copy thereof; and
 - (b) a shipping document signed by the consignor of the goods carried showing the name of the consignor, the name and address of the consignee, the originating point and the destination of the shipment and the particulars of the goods comprising the shipment,

and shall surrender them for inspection on the demand of an officer.

Copy of lease to be carried

(3) Every driver of a commercial vehicle that is under lease or contract to the owner, consignor or consignee of the goods

19

being carried shall carry at all times while carrying the goods on a highway a copy of the lease, contract or notice of contract and shall surrender it for inspection on the demand of an officer

(4) Every driver of a commercial vehicle that is being oper-trop permit to be ated under the authority of a trip permit shall carry or keep the permit in a readily accessible place in the vehicle and shall surrender it for inspection on the demand of an officer.

(5) Every person operating a public truck under an operat- Where limit ing authority that limits the number of commercial vehicles of vehicles that may be operated thereunder shall carry in the vehicle a vehicle certificate issued pursuant to such operating authority and shall surrender it for inspection on the demand of an officer.

18.—(1) Except as otherwise provided in the regulations, Publishing every licensee shall publish, as prescribed, a tariff of tolls showing the rates and charges and the conditions of carriage for the carrying of goods to and from points in respect of which the carriage is provided or offered by the licensee.

(2) No licensee shall charge a toll other than that contained Tolls in a tariff that is in effect or impose conditions of carriage that are not contained in or imposed in accordance with the tariff.

(3) Subsection (2) does not apply to a licensee who charges Exception the toll under a contract, of which there is written evidence, that is for a term.

- (a) of less than fourteen days;
- (b) of not less than six months and that provides for an ascertainable maximum quantity of goods to be transported at that toll; or
- other than as set out in clause (a) or (b) but has been approved by the Board.
- (4) A tariff of tolls shall not come into effect until fifteen Coming days after it has been published in the prescribed manner or, where the Board has waived the fifteen days notice, until it has been published in the prescribed manner.

into effect

(5) The Board, on the application of a licensee, may, in Power of any particular situation, reduce or waive the fifteen days notice referred to in subsection (4) or approve the term of a contract for purposes of clause (3) (c).

Bill of lading

19.—(1) Except as otherwise provided in the regulations, every licensee shall issue a bill of lading to the person delivering or releasing goods to the licensee for carriage for compensation.

Copy to be retained

(2) A signed copy of every bill of lading issued under this Act shall be retained, as, where and for the time prescribed, by the consignor of the goods involved and by the issuer.

Production of bill of lading

(3) Except as otherwise provided in the regulations, every driver operating a public truck shall carry a copy of the bill of lading in respect of the goods being carried and shall surrender it for inspection on the demand of an officer.

Copy of bill of lading to accompany all goods

(4) Where a shipment of goods is carried on more than one vehicle, the licensee shall ensure that every part of the shipment is accompanied by a copy of the appropriate bill of lading.

Way bill

(5) For the purpose of subsections (3) and (4), a way bill, containing such information as is prescribed, may be substituted for the bill of lading.

Exemption certificate

(6) The Minister may grant a bill of lading exemption in an operating authority to a licensee if the operating authority is within a prescribed class.

Idem

(7) Subsections (3) and (4) do not apply in situations where there is no bill of lading or way bill because its use is obviated through the existence of an exemption granted under this section.

Access to records

(8) Every person to whom a bill of lading exemption has been granted under subsection (6) shall make available to an officer of the Ministry, upon demand, access to the holder's records, whether in printed form or on film or the access is by electronic means or otherwise, and shall assist the officer in examining and extracting therefrom information that would, except for the exemption, be required to have been contained in a bill of lading or way bill.

Insurance

20. Every licensee shall carry such insurance or provide such bond as is prescribed and shall ensure evidence thereof is carried in every commercial vehicle operated by the licensee.

Direction to stop

21. Any officer may, for the purpose of an examination, direct, by signals or otherwise, the driver of any commercial vehicle driven on a highway to stop, and the driver upon being so directed shall stop the vehicle.

22.—(1) Any officer may, at any time, examine any commercial vehicle, its contents and equipment for the purpose of ascertaining whether this Act, the Highway Traffic Act and R.S.O. 1980, the regulations under either Act are being complied with and the person in control of the vehicle shall assist in the examination of it, its contents and equipment.

by officer

(2) Where a commercial vehicle examined under this sec-Surrender tion contains goods, the officer conducting the examination may require the person in charge of the vehicle to surrender all documents in the possession of that person or in the vehicle relating to the operation of the vehicle and to the carriage and ownership of the goods and to furnish all information within that person's knowledge relating to the details of the current trip and the ownership of the goods.

of documents

(3) Where an officer is of the opinion, on reasonable and probable grounds, that a commercial vehicle is being operated in contravention of subsection 3 (1), the officer may,

detention

- (a) direct the driver of the vehicle to drive the vehicle to such location as is reasonable in the circumstances and detain it at that location; and
- (b) seize the permits and number plates for the vehicle,

until the vehicle is able to be operated in compliance with subsection 3 (1).

(4) Every driver who is directed under clause (3) (a) shall comply with the direction.

Duty on driver

(5) Every permit seized under subsection (3) shall be deemed to be under suspension for the purposes of section 33 of the Highway Traffic Act while it is in the custody of the R.S.O. 1980, officer seizing it.

Permit suspension

(6) Where permits and number plates have been seized or a commercial vehicle has been detained under subsection (3), the person entitled to possession of the vehicle may apply to the District Court for an order that the permits and plates be returned or the vehicle released, as the case may be, and upon a security being deposited with the Court in such amount not to exceed \$5,000, as determined by the Court, the order may be issued.

Order to

(7) Every security deposited under subsection (6) shall be Disposition held until the final disposition of a charge laid in respect of the believed contravention that led to the seizure or detention or, where a charge is not laid within six months after the

seizure or detention, the expiration of the six-month period, whichever first occurs.

Idem

(8) Where there is a conviction in respect of a charge referred to in subsection (7), the security deposited shall be applied to pay the fine imposed.

Lien

(9) All costs necessarily incurred in detaining and storing a vehicle under subsection (3) are a lien on the vehicle.

Examination of records

- **23.** An officer of the Ministry may examine all books, records and documents of,
 - (a) a licensee or a holder of a trip permit relating to the business of operating public trucks; or
 - (b) a holder of a certificate of intercorporate exemption or of an affiliated corporation named in the certificate relating to the transportation of goods for compensation,

for the purpose of ensuring that the provisions of this Act and the regulations are being complied with and the officer may, for the purpose of the examination, upon producing his or her designation as an officer of the Ministry, enter at any reasonable time the business premises of the licensee, holder or affiliated corporation, as the case may be.

Investigation

24.—(1) Where the Minister believes, on reasonable and probable grounds, that any person has contravened a provision of this Act or the regulations, the Minister may appoint one or more persons to investigate whether the contravention has occurred and the person appointed shall report the results of the investigation to the Minister.

Powers of investigator

- (2) For purposes relevant to an investigation under this section, the investigator may inquire into and examine the business affairs of the person in respect of whom the investigation is being made and may,
 - (a) upon production of his or her appointment, enter, at any reasonable time, the business premises of the person and examine books, papers, documents and things relevant to the investigation; and
 - (b) inquire into negotiations and transactions made by or on behalf of or in relation to the person relating to the transportation of goods or the use of public trucks or that are otherwise relevant to the investigation,

and for the purpose of the inquiry, the investigator has the powers of a commission under Part II of the Public Inquiries R.S.O. 1980, Act, which Part applies to the inquiry as if it were an inquiry under that Act

(3) No person shall obstruct an investigator in the course of No person an investigation under this section or withhold from an investigator or conceal or destroy any books, papers, documents or things relevant to the investigation.

(4) Where a justice of the peace is satisfied, upon an appli- Application cation without notice by an investigator acting under this section without notice by an investigator acting under this section without notice by an investigator acting under this section without notice by an investigator acting under this section without notice by an investigator acting under this section without notice by an investigator acting under this section without notice by an investigator acting under this section without notice by an investigator acting under this section without notice by an investigator acting under this section without notice by an investigator acting under this section without notice by an investigator acting under this section without notice by an investigator acting under this section without notice by an investigator acting under this section without notice by an investigator acting under this section with the peace of the peace o tion.

- (a) that the investigation has been ordered and that the applicant has been appointed to conduct it; and
- (b) that there are reasonable grounds for believing there are in a specified building, dwelling, receptacle or place, books, papers, documents or things relating to the investigation,

the justice of the peace may, whether or not an inspection has been made or attempted under clause (2) (a), issue an order authorizing the investigator, together with such police officers as the investigator calls upon to assist, to enter and search, if necessary by reasonable force, the building, dwelling, receptacle or place for the books, papers, documents or things and to examine them.

(5) Every entry and search authorized under subsection (4) Times shall be made between sunrise and sunset unless the order authorizes the investigator to make the search at night.

(6) The Minister may appoint an expert to assist in examin- Expert ing books, papers, documents or things examined under clause (2) (a) or subsection (4).

25.—(1) Any person,

Copies

- (a) obtaining a document under section 22, may take the document for the purpose of making a copy of it; or
- (b) in the course of an investigation under section 23 or 24, upon giving a receipt therefor, may take anything that may be examined under that section for the purpose of making copies thereof,

but the copying shall be done as quickly as reasonably possible and the thing copied shall be promptly returned thereafter.

Idem

(2) Any copy made as provided in subsection (1) and certified to be a true copy by the person making the copy is admissible in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the original document and that the facts set out therein are true.

Cancellation or amendment of certificate **26.**—(1) The Minister may amend a certificate of intercorporate exemption where a corporation named in the certificate is no longer affiliated to the holder of the certificate or, where the corporation named in the certificate is the only one so named and is no longer affiliated to the holder of the certificate, the Minister may cancel the certificate.

Minister may suspend or cancel certificate

R.S.O. 1980, c. 198 (2) The Minister may suspend or cancel a certificate of intercorporate exemption where the holder thereof or any person under the control or direction of the holder or of an affiliated corporation named therein contravenes this Act or the regulations, the *Highway Traffic Act* or the regulations thereunder or the provisions of the certificate, and the contravention is such that there are grounds for believing that transportation services permitted by the certificate will not be carried on in accordance with the law.

Cancellation of licence

- **27.**—(1) The Minister may cancel an operating licence,
 - (a) in whole, where the licensee fails to provide any part of the transportation service for which the licensee is licensed for a continuous period of one year;
 - (b) in part, where the licensee fails to provide transportation service in respect of that part for a continuous period of one year; or
 - (c) in whole or in part at the request of the licensee.

Suspension or cancellation of licence

- (2) The Minister may suspend or cancel an operating licence in whole or in part where,
 - (a) the licensee or any person under the control or direction of the licensee contravenes this Act or the regulations, any Act referred to in clause 6 (5) (b) or the provisions of the licence and the contravention is such that there are reasonable grounds for believing that the transportation services permitted

by the licence will not be carried on in accordance with this Act or the regulations;

- (b) there has been misconduct or lack of integrity or honesty by the licensee in carrying on the transportation service:
- the licensee is financially incapable of providing transportation services in accordance with this Act and the regulations or the provisions of the licence or of meeting the licensee's financial responsibilities to users of the services; or
- (d) the licensee holds an owner-driver or single-source authority and has been a party to a contract under the authority that has been cancelled in less than thirty days in circumstances that afford reasonable grounds for believing that the transportation service authorized by the authority will not be carried on in accordance with this Act and the regulations.
- (3) The Minister may cancel a bill of lading exemption of Cancellation any holder of an operating licence who does not comply with lading subsection 19 (8) (access to records) or whose records do not exemption disclose the information that is required in a bill of lading or way bill.

of bill of certificate

28.—(1) Where the Minister proposes to suspend or can-Notice of cel an operating licence, in whole or in part, to suspend, proposal to cancel, etc. amend or cancel a certificate of intercorporate exemption or to cancel a bill of lading exemption, the Minister shall serve notice of the proposal together with reasons therefor on the licensee or certificate holder.

(2) Every person who is served with a notice under subsec-Right to tion (1) and serves on the Minister and the Board, within fifteen days after that person receives service of the notice, a request for a hearing, is entitled to a hearing by the Board in respect of the proposal.

(3) Where the Minister does not receive a request for a Where no hearing as provided in subsection (2), the Minister may, on requested the expiration of the fifteen days referred to in subsection (2), carry out the proposal.

(4) For the purpose of subsection (1), a notice that is Service mailed by prepaid post to the licensee or certificate holder at that person's address last known to the Minister shall be deemed to have been served on the third day after the day of mailing.

Extension of time

(5) The Board, on application by a licensee or certificate holder, as the case may be, may extend the time for requesting a hearing, either before or after expiration of the fifteenday period, and may give such directions as it considers proper consequent upon the extension.

Parties

(6) The Minister, the licensee or certificate holder and such other persons as the Board may specify are parties to every hearing under this section.

Efforts to comply (7) In a hearing held under this section, the Board shall take into account, where appropriate, evidence as to the manner in which the licensee has carried on operations under the licence after receipt of notice of hearing and up to the hearing.

Opportunity to examine evidence

(8) The Minister shall give any party to a hearing an opportunity to examine, before the hearing, all documentary evidence that will be introduced and all reports, the contents of which, will be given in evidence at the hearing.

Recommendations of Board (9) The Board shall, after a hearing under this section, make a report to the Minister, setting out its findings of fact, conclusions of law and recommendations.

Decision subsequent to report

(10) The Minister, on receiving and considering a report made under this section, may carry out the proposal to which it relates, fully or in a modified manner and, where he does so, shall give written reasons for the decision to the licensee or holder or, where the Minister decides not to carry out the proposal, he shall so advise the licensee or certificate holder.

Referral to Board where uncertainty **29.**—(1) The Minister may at any time refer an operating licence to the Board where, in the opinion of the Minister, any part is ambiguous or the rights granted by the licence are uncertain and the Board shall, after a hearing, report to the Minister and may recommend that the licence be amended to resolve any ambiguity or uncertainty.

Issue of clarified licence

(2) Upon receipt of a report under subsection (1) that recommends a licence be amended, the Minister shall issue an amended operating licence in the form recommended by the Board.

Confidentiality **30.** Every person employed in the administration of this Act, including an investigator under section 24, shall preserve confidentiality with respect to all matters that come to his or her knowledge in the course of that person's duties or employment and shall not communicate any such matter to any other person except,

(a) as may be required in connection with the administration of this Act and the regulations or any proceeding under this Act or the regulations or of the Motor Vehicle Transport Act (Canada):

R.S.C. 1970. c. M-14

- (b) to his or her counsel; or
- (c) with the consent of the person to whom the information relates.
- 31. Where the Minister receives a report under subsection Cancellation 5 (3) or (4) or information that leads the Minister to conclude by Board that a report should have been made under subsection 5 (3) or (4), the Minister shall refer the report or the information to the Board and the Board shall hold a hearing to determine whether persons different from those indicated at the time of the application for the licence are in actual control of the transportation service authorized by the licence and, where that is the case, the Minister shall cancel the operating licence.

32.—(1) Every person who contravenes any of the provi- Penalty sions of this Act or the regulations is guilty of an offence and on conviction, where a penalty for the contravention is not otherwise provided, is liable to a fine of not less than \$150 and not more than \$1.500.

(2) Every person who knowingly makes a false statement in Idem an application, declaration, affidavit or document required under this Act or the regulations or by the Board is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than thirty days, or to both.

33. Any licensee may be charged with and convicted of an Licensee offence under this Act or the regulations for which the driver liable of the licensee's public truck is subject to be charged and on conviction, the licensee is liable to the penalty provided for the offence.

34. No prosecution shall be instituted under this Act with- Consent to out the prior consent of an officer.

35.—(1) There shall be a committee to be known as the Advisory Advisory Committee on Truck Transportation composed of not fewer than twelve and not more than twenty members.

Committee on Truck Transportation

(2) The Minister shall appoint the members of the Commit-Members tee for such terms as the Minister determines and in making

the appointments shall include representatives of the Ministry, the Board, shippers and carriers.

Chairman and

(3) The Minister shall designate a chairman and a vicevice-chairman chairman from among the members appointed.

Vacancies

(4) The Minister may fill any vacancy that occurs in the membership of the Committee.

Function of Committee

- (5) The function of the Committee is to advise and make recommendations to the Minister on,
 - the effectiveness of this Act and its administration by the Ministry and the Board in relation to the objectives set out in section 2;
 - (b) any matter concerning the transportation of goods in commercial vehicles; and
 - the degree to which the public interest test is necessary to advance the objectives of section 2.

Policy statements

36.—(1) The Lieutenant Governor in Council may issue policy statements setting out matters to be considered by the Board when determining questions of public interest and the Board shall take the statements into consideration together with such other matters as the Board considers appropriate.

Publication

(2) Every policy statement made under subsection (1) shall be published in The Ontario Gazette.

Ministerial directions to investigate

37.—(1) The Minister may direct the Board to examine and investigate such matters relating to transportation policy as the Minister specifies and the Board shall report thereon to the Minister.

Hearings

(2) For the purposes of subsection (1), the Board may hold such hearings as it considers necessary.

Non-application of R.S.O. 1980, c. 338

38. Section 22 of the Ontario Highway Transport Board Act does not apply to an order or decision of the Board under this Act.

One valid licence only R.S.O. 1980, c. 407

39.—(1) Every operating licence issued to a licensee under the Public Commercial Vehicles Act or this Act is cancelled upon the issuance of a new licence under this Act to the same licensee.

Amending licence

(2) An amended licence constitutes a new licence, as amended, for the purpose of subsection (1).

- **40.**—(1) The Lieutenant Governor in Council may make Regulations regulations,
 - prescribing classes of licences, licensees and authorities;
 - 2. prescribing fees and the basis for computing fees and providing for the payment thereof;
 - 3. prescribing conditions and limitations to which licences, authorities, permits and certificates of intercorporate exemptions shall be subject;
 - 4. prescribing the contents of and the information to be contained in bills of lading;
 - 5. prescribing the form, amount, nature, class, provisions and conditions of insurance policies and bonds that shall be provided and carried by licensees;
 - 6. respecting the form and content of tariffs and tolls, including conditions of carriage, the publication thereof and the payment of tolls;
 - 7. prescribing forms, including the contents thereof and information to be contained therein, and providing for their use and the filing thereof;
 - 8. prescribing, regulating and limiting the hours of labour of drivers of public trucks;
 - 9. prescribing the qualifications of drivers of public trucks and prohibiting persons who do not meet the qualifications from driving public trucks;
 - 10. prescribing equipment to be carried by public trucks and the condition and location in which the equipment shall be kept;
 - 11. prescribing the method of bookkeeping or accounting to be used and the returns or statements to be filed by licensees and providing for the filing thereof;
 - 12. prescribing criteria to be taken into account in determining the fitness of applicants for operating authorities and licences;
 - prescribing and providing for the information to be marked on articles covered by a bill of lading issued

- by licensees and exempting any class of licensees from any provision so prescribed or provided;
- 14. prescribing conditions that shall be deemed to be a part of every contract or a class of contract for the carriage of goods for compensation to which this Act applies;
- 15. exempting any class of licensees or drivers of any class of public truck from the application of sections 18 and 19 and prescribing conditions to which any exemption is subject;
- 16. prescribing classes of operating authorities for the purposes of subsection 19 (6) and conditions that apply to holders of operating authorities who carry goods under a bill of lading exemption;
- 17. governing the issue and renewal of operating licences;
- 18. prescribing the qualifications of applicants for and holders of operating authorities and operating licences;
- 19. governing the issue and renewal of certificates of intercorporate exemption and prescribing terms to which the certificates shall be subject;
- 20. establishing certificate of competency training programs including the prescribing of training courses, courses of study, methods of training, qualifications for certification, fixing credits to be allowed for courses, the administration of the program, providing for the granting of certificates and the recognition of previous experience;
- 21. prescribing classes of public trucking undertakings and the number, location and scope of duties of holders of certificates of competency required to be employed therein;
- 22. prescribing the contents of documents and financial statements and providing for their filing with the Minister or the Board;
- 23. prescribing the period of time for which certificates of intercorporate exemption are valid and providing for the renewal thereof;

- 24. prescribing the method of determining the number of employees required to hold a certificate of competency and providing for different calculations based on the type of venture carried on;
- 25. designating certificates or documents that shall, on designation, be deemed to be a certificate of competency issued under this Act;
- 26. respecting any matter or thing that is required or permitted to be prescribed under this Act.
- (2) Any regulation may be general or particular in its appli- Idem cation
- (3) Any regulation may adopt by reference in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code, standard or specification, and may require compliance with any code, standard or specification that is so adopted.

Adoption of codes, etc.

41.—(1) An operating licence issued pursuant to a certifi- Transition cate of public necessity and convenience under section 10b of the Public Commercial Vehicles Act shall be deemed to be an R.S.O. 1980, operating licence for the purpose of this Act.

(2) An operating licence issued under the Public Commer- Idem cial Vehicles Act, other than a licence referred to in subsection (1), shall be deemed to be an operating licence for the purpose of this Act until and including the 31st day of December, 1988 unless cancelled sooner by the operation of section 39.

(3) A certificate of intercorporate exemption issued under Idem section 4a of the Public Commercial Vehicles Act shall be deemed to be a certificate of intercorporate exemption for the purpose of this Act.

(4) No person shall operate a public truck under an operat- Limitation ing licence referred to in subsection (2) unless the vehicle bears a licence plate issued to the operator under the Public Commercial Vehicles Act.

(5) Subsection 6 (1) of the Public Commercial Vehicles Act Limitation does not apply where the application for the licence is made 1980, c. 407, after the 1st day of July, 1987.

re R.S.O. subs. 6 (1)

42.—(1) Section 2, sections 4a and 4b, as enacted by the Statutes of Ontario, 1981, chapter 71, section 3, subsection 6 (3), sections 9, 13, 18 to 22, sections 24 to 26, section 27, as amended by the Statutes of Ontario, 1981, chapter 71, section 10, and sections 27 to 30 of the *Public Commercial Vehicles Act*, being chapter 407 of the Revised Statutes of Ontario, 1980, are repealed.

(2) The Public Commercial Vehicles Act, being chapter 407 of the Revised Statutes of Ontario, 1980, the Public Commercial Vehicles Amendment Act, 1981, being chapter 71, the Public Commercial Vehicles Amendment Act, 1983, being chapter 79, the Public Commercial Vehicles Amendment Act, 1984, being chapter 20, and subsection 40 (1) of the Truck Transportation Act, 1986, being chapter ..., are repealed on the 1st day of January, 1989.

Commencement **43.** This Act comes into force on the 1st day of July, 1987.

Short title

44. The short title of this Act is the *Truck Transportation Act*, 1986.





2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 151

An Act to amend the Ontario Highway Transport Board Act

The Hon. E. Fulton

Minister of Transportation and Communications

1st Reading 2nd Reading 3rd Reading Royal Assent November 19th, 1986

EXPLANATORY NOTES

- **SECTION 1.** The definitions of "public commercial vehicle" and "public vehicle" are being deleted. They are not required in section 1.
- **SECTION 2.** Provision is being made to provide members of the Board with remuneration and expenses.
- **SECTION 3.** Section 16 of the Act gives the Board power to review any decision made by it. Currently, there are only two Acts under which it acts. These two Acts are being specified.
- SECTION 4. With the proposed *Truck Transportation Act, 1986*, there would be a third Act under which the Board would act. The new sections 16a and 16b of the Act deal with the Board's powers of review under the *Truck Transportation Act, 1986* as well as the *Ontario Highway Transport Board Act*. The new section 16c of the Act is an added area in respect of which the Board may hold hearings. The new section 16d provides for notice of hearings to be given to the Minister.
- **SECTION 5.** The specific reference to two Acts is being deleted. These are not necessary and the proposed *Truck Transportation Act, 1986* makes the specific references too restrictive. Subsection 19 (3) deals with the recording of oral evidence.
- **SECTION 6.** Section 22 of the Act provides for petitions to the Lieutenant Governor in Council. The effect of the amendment is to preclude such petitions in respect of decisions on matters arising under the proposed *Truck Transportation Act, 1986.*

SECTION 7. Self-explanatory.

Bill 151 1986

An Act to amend the **Ontario Highway Transport Board Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Clauses 1 (c) and (d) of the Ontario Highway Transport Board Act, being chapter 338 of the Revised Statutes of Ontario, 1980, are repealed.
- 2. Section 2 of the said Act is amended by adding thereto the following subsection:
- (3) The members shall receive such remuneration and Remunerexpenses as the Lieutenant Governor in Council determines.

- 3. Section 16 of the said Act is amended by inserting after "application" in the second line "with respect to matters arising under the Public Commercial Vehicles Act or the Public Vehicles Act".
- 4. The said Act is amended by adding thereto the following sections:
- 16a.—(1) The Board may, if it considers it appropriate to Review re do so, or shall, on the direction of the Minister or the Lieutenant Governor in Council, rehear any application or reconsider any decision, order, declaration or ruling made by it under the Truck Transportation Act, 1986.

1986, c....

- (2) After a rehearing or reconsideration under subsection Idem (1), the Board may amend, revoke or confirm the decision, order, declaration or ruling.
- (3) The powers of the Board under this section and section Concurrent 16 are concurrent with the powers of the Minister related to the suspension and cancellation of operating licences.

Appeal to Board **16b.**—(1) Any person objecting to a decision of the Board,

1986, c....

- (a) made as a result of a hearing under the *Truck Transportation Act*, 1986 to conduct a public interest test; or
- (b) made under this Act,

may, with the consent of the Board, appeal the decision.

Idem

(2) Where the grounds for an appeal under subsection (1) are that new facts have arisen since the hearing or that the decision was based on an error of fact, the appeal shall be heard by the same members who made the original decision.

Idem

(3) Where the grounds for an appeal are other than those set out in subsection (2), the appeal shall be heard by members who were not involved in the original decision.

Interim licence (4) The Board, when it consents to an appeal under subsection (1), may recommend that the Minister grant an interim operating licence that is valid until the final disposition of the appeal.

Reviewing operations and conduct

16c.—(1) The Board may, with the prior approval of the Minister, if it considers it appropriate to do so, or shall, on the direction of the Minister, hold a hearing,

R.S.O. 1980, c. 198

- (a) into the operation of any transportation service conducted by means of commercial motor vehicles, within the meaning of section 15a of the *Highway Traffic Act*; or
- (b) into the conduct of any holder of a Commercial Vehicle Operator's Registration Certificate,

to determine whether the operation or conduct,

1986, c....; R.S.C. 1970, c. M-14

- (c) contravenes the provisions of the *Truck Transportation Act*, 1986, *Motor Vehicle Transport Act* (Canada) or the regulations thereunder; or
- (d) constitutes a persistent breach of contracts between the provider of the service or certificate holder and shippers.

Order by Board (2) When, after a hearing under subsection (1), the Board determines that there has been a contravention, it may order,

- (a) that the operation of the transportation service in the manner that caused the contravention stop;
- (b) that the conduct of the holder of the Commercial Vehicle Operator's Registration Certificate that constituted the contravention stop; or
- if the operator of the transportation service is the holder of an operating licence, that the licence be amended to expire upon a specified date.
- (3) Subsection (2) does not apply where the hearing is the Report to result of a direction by the Minister if, at the time of the direction, the Minister also directed the Board to report its findings to the Registrar of Motor Vehicles.

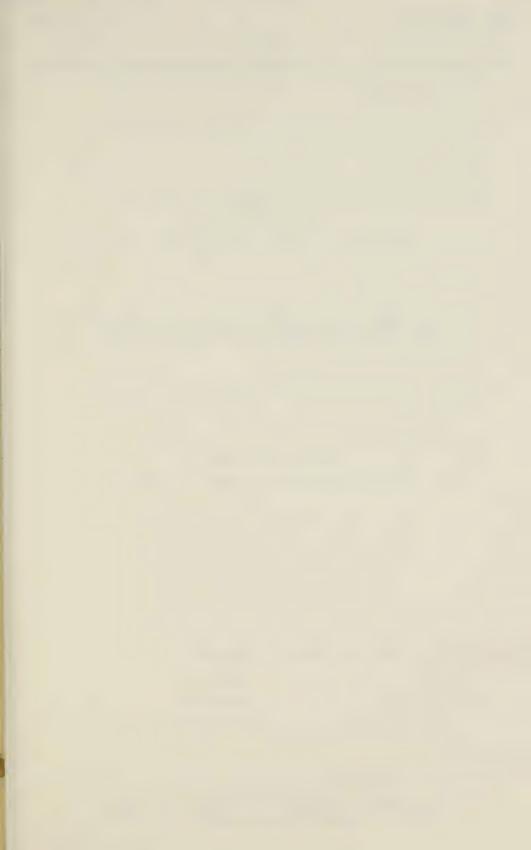
Registrar

16d. The Board shall give the Minister thirty days notice Notice to of every hearing under section 16a.

Minister

- 5. Subsection 19 (3) of the said Act is amended by striking out "under the Public Vehicles Act or the Public Commercial Vehicles Act" in the fourth and fifth lines.
- 6. Section 22 of the said Act is amended by inserting after "Board" in the fourth line "in respect of a matter arising under the Public Vehicles Act or the Public Commercial Vehicles Act".
- 7. Section 26 of the said Act is amended by adding thereto the following subsection:
- (2) The Board may order any parties to a hearing before it Costs to pay the costs of any of the other parties involved or may make any other order with respect to costs that under all the circumstances it considers just.
- 8. This Act comes into force on a day to be named by Commenceproclamation of the Lieutenant Governor.
- 9. The short title of this Act is the Ontario Highway Short title Transport Board Amendment Act, 1986.







2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 152

An Act to amend the Highway Traffic Act

The Hon. E. Fulton

Minister of Transportation and Communications

1st Reading 2nd Reading 3rd Reading

Royal Assent

November 19th, 1986



EXPLANATORY NOTES

The Bill brings the concept of "Commercial Vehicle Operator's Registration" or "CVOR" under the *Highway Traffic Act*. This concept is tied into the proposed *Truck Transportation Act*, 1986.

- **SECTION 1.** Subsection 7 (6) of the Act authorizes the Minister to refuse to issue or validate vehicle permits for vehicles covered by specified Acts unless the owner of the vehicle has an operating licence under a specified Act. The proposed *Truck Transportation Act*, 1986 is being added to the list of specified Acts.
- SECTION 2. The proposed amendments provide for the issuance of CVOR certificates. The driving of commercial motor vehicles is, basically, prohibited unless the operator has a CVOR certificate. The carrying of specified documents is mandated. Administrative and enforcement procedures are set up to implement this policy.
- **SECTION 3.** Section 30 of the Act was recast to simplify the structure, clarify the intent and to incorporate references to CVOR certificates. Some changes are necessary to reflect the existence of the proposed CVOR system.
- SECTIONS 4, 5 and 10. Updating the Act to anticipate the enactment of the proposed *Truck Transportation Act*, 1986.
- **SECTION 6.** Section 166 of the Act provides that a motor vehicle owner is jointly liable with the driver of the vehicle for damage caused through negligence. The added provision imposes a similar liability on the operator of a commercial motor vehicle who may not be the owner of the vehicle.
- SECTIONS 7 and 8. Complementary to section 2 of the Bill.
- SECTION 9. The amendment corrects an internal reference and is complementary to section 3 of the Bill.

Bill 152 1986

An Act to amend the Highway Traffic Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Subsection 7 (6) of the Highway Traffic Act, being chapter 198 of the Revised Statutes of Ontario, 1980, is amended by striking out "or" at the end of clause (a), by adding "or" at the end of clause (b) and by adding thereto the following clause:
 - (c) as a public truck within the meaning of the Truck 1986, c. ... Transportation Act, 1986.
- 2. The said Act is amended by adding thereto the following sections:

15a.—(1) In this section and in sections 15d and 15e,

Definitions

"commercial motor vehicle" does not include,

(a) an ambulance, a fire apparatus, a hearse, a casket wagon, a mobile crane, a motor home, a vehicle commonly known as a tow truck or a commercial motor vehicle, other than a bus, having a registered gross weight of not more than 3000 kilograms, unless the vehicle is prohibited from being operated except under the authority of an operating licence issued under the Public Commercial Vehicles Act, R.S.O. 1980, Public Vehicles Act or the Truck Transportation Act. 1986.

cc. 407, 425 1986, c. ...

- (b) a commercial motor vehicle leased for no longer than thirty days by an individual for the transportation of goods kept for that individual's personal use or the gratuitous carriage of passengers,
- (c) a commercial motor vehicle operated under a permit and number plates issued under a regulation

- made under clause 7 (14) (f) or (fa) that is not transporting passengers or goods,
- (d) a commercial motor vehicle operated under the authority of an In-Transit permit, and
- (e) a bus with a designed seating capacity for not more than eleven passengers that is used for personal purposes without compensation;
- "operator" means the person responsible for the operation of a commercial motor vehicle including the conduct of the driver of, and the carriage of goods, if any, in the vehicle or combination of vehicles;
- "owner-driver authority" means an owner-driver authority issued under the *Truck Transporation Act*, 1986;
 - "single-source authority" means a single-source authority issued under the *Truck Transportation Act*, 1986.

CVOR certificate required (2) No person shall drive or operate a commercial motor vehicle on a highway unless the operator is the holder of a CVOR certificate that is not under suspension.

Documents to be carried

- (3) Every driver of a commercial motor vehicle shall carry the original or a copy of,
 - (a) the CVOR certificate issued to the operator of the vehicle;
 - (b) the lease of the vehicle meeting the requirements of subsection (5) if it is a leased vehicle; or
 - (c) the applicable contract or the notice thereof, as filed with the Ministry, meeting the requirements of subsection (5) if the vehicle is operated under an owner-driver authority or single-source authority,

and where the operator has been issued fleet limitation certificates, a fleet limitation certificate.

Documents to be surrendered

(4) Every driver of a commercial motor vehicle shall, upon the demand of a police officer, surrender for inspection the documents that are required under subsection (3) to be carried.

Requirements for lease or contract or notice of contract carried under subsection (3) shall clearly identify the vehicle involved, the

parties thereto and their addresses, the operator of the vehicle and the operator's CVOR certificate.

(6) A commercial motor vehicle operated under the author- Deemed ity of an owner-driver authority or single-source authority shall be deemed to be operated by the person or partnership that contracted with the holder of the licence.

(7) For a commercial motor vehicle, for which an Ontario Substitution permit is not in force and which bears number plates from and certificate is registered in another province or state, the motor vehicle permit may be substituted for a CVOR certificate for the purposes of subsections (2) and (3).

15b.—(1) The Minister shall issue a CVOR certificate to Certificates every person who applies therefor in the prescribed form and Minister meets the requirements of this Act and the regulations.

(2) The Minister may refuse to issue a CVOR certificate to Refusal a partnership or corporation where a partner or officer thereof is the holder of, or a partner or officer of a holder of, a CVOR certificate that is under suspension or the subject of a fleet restriction under subsection 30 (1) or (2).

(3) The Minister may refuse to issue a CVOR certificate to Idem an individual where the individual is a partner of a partnership or officer of a corporation that is the holder of a CVOR certificate that is under suspension or the subject of a fleet restriction under subsection 30 (1) or (2).

(4) No person, alone or in partnership, is entitled to hold more than one CVOR certificate.

certificate only

15c. Every corporate holder of a CVOR certificate shall Changes notify the Minister in writing, within fifteen days after any change in the name, address or persons constituting the officers of the corporation, of the change made.

15d. In the absence of evidence to the contrary, where Person there is no CVOR certificate, lease or contract applicable to a to be commercial motor vehicle, the holder of the plate portion of operator the permit for the vehicle shall be deemed to be the operator for the purposes of sections 15c and 15e.

15e.—(1) Every person who gives up possession of a com-Retaining mercial motor vehicle under a lease or contract shall retain a contract copy of the lease or contract in his place of business for a period of one year after the termination of the lease or contract.

Where contravention of subs. 15a (2)

- (2) A police officer who has reason to believe that a commercial motor vehicle is being operated in contravention of subsection 15a (2) or subsection 30 (3e) may,
 - (a) detain the vehicle at any location that is reasonable in the circumstances; and
 - (b) seize the permits and number plates for the vehicle,

until the vehicle can be moved without a contravention of this Act occuring.

Permit suspended (3) Every permit seized under subsection (2) shall be deemed to be under suspension for the purposes of section 33 while it is in the custody of the officer seizing it.

Lien

(4) The costs incurred in detaining a vehicle under subsection (2) are a lien on the vehicle, which may be enforced in the manner provided by section 52 of the *Mechanics' Lien Act*.

Court application

R.S.O. 1980,

(5) The person entitled to possession of a vehicle that is detained or the permits or plates of which are seized under subsection (2) may apply to the District Court for an order that the vehicle be released or the permits and plates returned, as the case may be.

Security

(6) On an application being made under subsection (5), the Court may make the order applied for on condition that a security, for the payment of any fine imposed, in such amount as is determined by the Court but not exceeding \$5,000 be deposited with the Court.

Return of security

- (7) Every security deposited under subsection (6) shall be returned,
 - (a) upon a final acquittal under all charges arising in connection with the seizure or detention;
 - (b) where a charge is not laid within six months after the seizure or detention, on the expiration of the six month period; or
 - (c) upon a conviction arising in connection with the seizure or detention, after withholding the amount of the fine.

Offence

15f.—(1) Every person who contravenes subsection 15a (3) or (4), section 15c or 15e or a regulation made under

section 15g is guilty of an offence and on conviction is liable to a fine of not more than \$500.

HIGHWAY TRAFFIC

(2) Every person who contravenes subsection 15a (2) is Idem guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both.

15g. The Lieutenant Governor in Council may make Regulations regulations,

- (a) prescribing forms;
- (b) prescribing fees for the replacement of CVOR certificates:
- classifying persons and vehicles and exempting any class of person or vehicle from any provision of section 15a and prescribing conditions for any such exemption:
- (d) prescribing the qualifications required to obtain and to hold CVOR certificates and authorizing the Minister to waive such qualifications as are specified in the regulations under the circumstances prescribed therein:
- (e) providing for the suspension or cancellation of CVOR certificates where the prescribed qualifications or conditions are not maintained:
- (f) respecting documents and information to be filed with or supplied to the Ministry prior to the issuance of CVOR certificates or as a condition of retention thereof by the holders of CVOR certificates:
- (g) providing for a demerit point system for holders of CVOR certificates and for the cancellation and suspension of certificates for contravention of the system;
- (h) requiring the attendance of certificate holders to show why a certificate should not be cancelled or suspended.
- **3.**—(1) Subsections 30 (1), (2) and (3) of the said Act are repealed and the following substituted therefor:
 - (1) The Registrar may suspend or cancel,

- (a) the plate portion of a permit as defined in Part II;
- (b) a driver's licence; or
- (c) a CVOR certificate,

on the grounds of,

- (d) misconduct for which the holder is responsible, directly or indirectly, related to the operation or driving of a motor vehicle;
- (e) conviction of the holder for an offence referred to in subsection 184 (1) or (1a); or
- (f) any other sufficient reason not referred to in clause (d) or (e).

Restriction

(2) As an alternative to a suspension or cancellation under subsection (1), the Registrar may restrict the number of commercial motor vehicles that may be operated by a holder of a CVOR certificate during such period as the Registrar stipulates.

New licence, etc., not to be issued (3) A person whose permit, licence or certificate is cancelled or is under suspension is not entitled to be issued a certificate, licence or plate portion of a permit, as the case may be.

Fleet limitation certificates (3a) Where a restriction is imposed under subsection (2), the Registrar shall issue to the holder of the CVOR certificate fleet limitation certificates in a number equal to the number of vehicles permitted to be operated.

Offence

(3b) Every person whose permit for a vehicle, other than a commercial motor vehicle, is suspended or cancelled and applies for or procures the issue or has possession of the plate portion of a permit issued to him or her is guilty of an offence and on conviction is liable to a fine of not less than \$40 and not more than \$200 and to imprisonment for a term of not more than thirty days.

Idem

(3c) Every person whose licence is suspended or cancelled and who, while prohibited from driving a motor vehicle, applies for or procures the issue to or has possession of any portion of a licence other than a Photo Card portion issued to him or her is guilty of an offence and on conviction is liable to a fine of not less than \$40 and not more than \$200 and to imprisonment for a term of not more than thirty days.

(3d) Every person whose permit for a commercial motor Idem vehicle or certificate is suspended or cancelled who applies for or procures the issue or has possession of a certificate or the plate portion of a permit for a commercial motor vehicle issued to him or her is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than thirty days, or to both.

(3e) Every person,

Idem

- in respect of whom a restriction is imposed under subsection (2) who operates a commercial motor vehicle in which a valid fleet limitation certificate is not carried: or
- (b) who operates a commercial motor vehicle without a permit or certificate or when his or her permit or certificate is under suspension.

is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both.

- (3f) For the purposes of this section, "commercial motor Interpretation vehicle" has the same meaning as defined in section 15a.
- (2) Subsection 30 (4) of the said Act is amended by inserting after "Act" in the second line "the Truck Transportation Act, 1986".
- 4. Subsection 44 (15) of the said Act is amended by inserting after "Public Vehicles Act" in the fourth line "the Truck Transportation Act. 1986".
- 5. Subsection 104 (5) of the said Act is amended by striking out "produced" in the fifth line and inserting in lieu thereof "surrendered" and by inserting after "Act" where it occurs the first time in the seventh line "the Truck Transportation Act, 1986".
- 6. Section 166 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 63, section 37, is further amended by adding thereto the following subsection:
- (3) In addition to any liability of an owner incurred under Liability of subsection (1), the operator of a commercial motor vehicle, as defined in subsection 15a (1), is liable for loss or damage sus-motor vehicle tained by any person by reason of negligence in the operation of the commercial motor vehicle on a highway.

- 7.—(1) Subclause 179 (c) (iii) of the said Act is repealed and the following substituted therefor:
 - (iii) a record of all licences, permits and CVOR certificates issued, suspended, revoked, cancelled or revived under this Act.
- (2) Clause 179 (c) of the said Act is amended by striking out "and" at the end of subclause (v), by renumbering subclause (vi) as subclause (vii) and by adding thereto the following subclause:
 - (vi) an operating record of every conviction of every CVOR certificate holder and the holder's agents and employees that is reported to the Registrar under section 184 and such other convictions, whether or not the certificate holder was the person convicted, as the Registrar considers useful for the purpose of the administration and enforcement of this Act, and
- **8.** Section 181 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 15, section 12 and 1983, chapter 63, section 43, is further amended by adding thereto the following subsection:

Interpretation

- (5) In this section, "owner" includes operator as defined in section 15a or as deemed in section 15d.
 - **9.** Subsection 190 (2) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 63, section 46, is amended by striking out "subsection 30 (2) or (3)" in the fourth line and inserting in lieu thereof "subsection 30 (3b), (3c), (3d) or (3e)".
 - 10. Subsection 194a (1) of the said Act, as enacted by the Statutes of Ontario, 1985, chapter 13, section 17, is amended by inserting after "the" in the first line "Truck Transportation Act, 1986", by inserting after "service" in the seventh line "on the operator of the vehicle as defined in subsection 15a (1) or" and by inserting after "unless" in the eighth line "in the case of the owner".

- 11. This Act comes into force on a day to be named by Commencement proclamation of the Lieutenant Governor.
- 12. The short title of this Act is the Highway Traffic Short title Amendment Act, 1986.



56

2nd SESSION, 33rd LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 153

An Act to amend the Election Finances Act, 1986

Ms Fish

2nd Reading 3rd Reading

1st Reading

3rd Reading Royal Assent November 20th, 1986

EXPLANATORY NOTE

The Bill provides that child care expenses of a candidate shall not be included as a campaign expense for the purpose of the Act.

Bill 153 1986

An Act to amend the Election Finances Act, 1986

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. The definition of "campaign expense" in subsection 1 (1) of the *Election Finances Act*, 1986, being chapter 33, is amended by striking out "and" at the end of clause (i), by adding "and" at the end of clause (j) and by adding thereto the following clause:
 - (k) child care expenses of a candidate,
- 2. This Act comes into force on the day it receives Royal Commencement
- 3. The short title of this Act is the Election Finances Short title Amendment Act, 1986.



Bill 154

Government Bill

Projet de loi 154

du gouvernement

2nd SESSION, 33rd LEGISLATURE, ONTARIO 35 ELIZABETH II, 1986 2º SESSION, 33º LÉGISLATURE, ONTARIO 35 ELIZABETH II, 1986

Bill 154

An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector

Projet de loi 154

Loi portant établissement de l'équité salariale dans le secteur parapublic et dans le secteur privé

The Hon. I. Scott

Attorney General



L'honorable I. Scott procureur général

1st Reading

November 24th, 1986

2nd Reading

3rd Reading

Royal Assent

1^{re} lecture

24 novembre 1986

2^e lecture

3e lecture

sanction royale

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EXPLANATORY NOTES

The Bill provides for the redressing of systemic gender discrimination in compensation for work performed by employees in female job classes in the establishments of all employers in the broader public sector (a defined term) and those employers in the private sector (a defined term) who employ ten or more employees. Among the features of the Bill are the following:

- 1. Systemic gender discrimination will be identified through comparisons between female job classes (a defined term) and male job classes (a defined term) in terms of relative compensation and in terms of the relative value of the work performed. (Section 3)
- 2. A criterion for determining value is set out. (Section 4)
- 3. Tests for the achievement of pay equity are set out. (Section 5)
- 4. Employers must establish and maintain compensation practices that provide for pay equity. (Section 6)
- Certain differences in compensation such as those resulting from legitimate seniority plans or red-circling are excluded in determining pay equity. (Section 7)
- 6. An employer cannot reduce compensation to achieve pay equity. (Section 8)
- 7. Intimidation of persons who seek enforcement of the Act or who are participating, or may participate, in enforcement proceedings is prohibited. (Section 8)
- 8. All employers in the broader public sector and those employers in the private sector who employ at least 100 employees will be required to develop and implement pay equity plans. Employers with more than nine and fewer than 100 employees may prepare and implement pay equity plans but are not required to do so. (Parts II and III)
- 9. Different classes of employers will have different time limits for implementing pay equity. (Clause 12 (2) (e))
- 10. Provision is made for enriched compensation adjustments for employees in the lowest paid female job classes. (Subsection 12 (3))
- 11. Each employer will be required to make annual adjustments in rates of compensation equal to at least 1 per cent of the employer's payroll for the preceding year until pay equity is achieved. (Subsections 12 (4) and (5))
- 12. Pay equity plans bind an employer, the employees of an employer and the bargaining agent, if any, of the employees. (Subsection 12 (8))
- 13. The employer and the bargaining agent for employees in a bargaining unit will negotiate the pay equity plan for the bargaining unit. (Section 13)
- 14. The employer will prepare the pay equity plan for employees who are not in a bargaining unit. (Subsection 13 (8) and section 14)
- 15. Review officers will investigate and attempt to settle pay equity plans where an employer or an employer and a bargaining agent are unable to prepare a pay equity plan by the mandatory posting date (a defined term). Review officers will have the power to settle outstanding matters by order. (Section 15)

NOTES EXPLICATIVES

Le projet de loi a pour objet d'éliminer la discrimination systémique entre les sexes en ce qui concerne la rétribution du travail effectué par les employés des catégories d'emplois à prédominance féminine qui oeuvrent dans les établissements de tous les employeurs du secteur parapublic (terme défini) et dans ceux des employeurs du secteur privé (terme défini) qui ont à leur service dix employés ou plus. Voici certains points saillants du projet de loi :

- 1. Repérage de la discrimination systémique entre les sexes au moyen de comparaisons établies entre les catégories d'emplois à prédominance féminine (terme défini) et les catégories d'emplois à prédominance masculine (terme défini) en ce qui concerne la rétribution proportionnelle et la valeur proportionnelle du travail effectué. (Article 3)
- 2. Établissement d'un critère servant à déterminer la valeur du travail. (Article 4)
- 3. Établissement de méthodes permettant de déterminer si l'équité salariale est atteinte. (Article 5)
- 4. Obligation pour les employeurs d'établir et de maintenir des pratiques de rétribution assurant l'équité salariale. (Article 6)
- 5. Exclusion, pour la détermination de l'équité salariale, de certains écarts de rétribution tels ceux qui sont fondés sur des régimes légitimes d'ancienneté ou sur la pratique du «salaire étoilé». (Article 7)
- 6. Interdiction à l'employeur de diminuer la rétribution afin d'atteindre l'équité salariale. (Article 8)
- Interdiction d'intimider les personnes qui demandent l'application de la loi, qui participent ou pourraient participer à une instance relative à l'exécution de la loi. (Article 8)
- 8. Obligation pour tous les employeurs du secteur parapublic, et pour les employeurs du secteur privé qui ont au moins 100 employés à leur service, d'élaborer et de mettre en oeuvre des programmes d'équité salariale. Les employeurs qui ont plus de neuf et moins de 100 employés peuvent élaborer et mettre en oeuvre un programme d'équité salariale, mais ne sont pas obligés de le faire. (Parties II et III)
- 9. Dates limites différentes selon les différentes catégories d'employeurs pour atteindre l'équité salariale. (Alinéa 12 (2) e))
- Rajustements plus importants pour les employés des catégories d'emplois à prédominance féminine dont le salaire est le plus bas. (Paragraphe 12 (3))
- 11. Obligation pour tous les employeurs d'effectuer des rajustements annuels de la rétribution équivalant à au moins 1 pour cent de leur feuille de paie pour l'année précédente, jusqu'à ce que l'équité salariale soit atteinte. (Paragraphes 12 (4) et (5))
- 12. Les programmes d'équité salariale lient l'employeur, les employés de l'employeur et leur agent négociateur, le cas échéant. (Paragraphe 12 (8))
- 13. Négociation d'un programme d'équité salariale relié à une unité de négociation entre l'employeur et l'agent négociateur des employés de l'unité de négociation. (Article 13)

- 16. A pay equity plan shall be deemed to have been approved by the Commission if no objections are filed with the Commission. (Subsections 14 (8) and 15 (5))
- 17. Small private sector employers will have a transition period before they have to comply with the Act with respect to existing compensation practices in existing establishments (a defined term). (Section 20)
- 18. The Pay Equity Commission of Ontario is established. It will have the power to deal with objections related to proposed pay equity plans and complaints related to the matters set out in the Act. (Sections 16, 21 and 26)
- 19. Fines may be imposed for contraventions of the Act or orders of the Commission. (Section 25)
- 20. Review officers will be appointed to investigate objections and complaints and to monitor the preparation and implementation of pay equity plans. (Subsection 28 (2) and section 33)
- 21. Provision is made for a review of the Act beginning seven years after the effective date. (Section 36)

- 14. Élaboration par l'employeur d'un programme d'équité salariale à l'intention des employés qui n'appartiennent pas à une unité de négociation. (Paragraphe 13 (8) et article 14)
- 15. Des agents de révision mènent des enquêtes et tentent d'amener les parties à accepter un règlement lorsqu'un employeur ou un employeur et un agent négociateur ne peuvent élaborer un programme d'équité salariale à la date d'affichage obligatoire (terme défini). Les agents de révision ont le pouvoir de régler au moyen d'un ordre les questions en souffrance. (Article 15)
- 16. Approbation réputée d'un plan d'équité salariale par la Commission en l'absence d'oppositions déposées auprès de celle-ci. (Paragraphes 14 (8) et 15 (5))
- 17. Période de transition accordée aux petits employeurs du secteur privé avant qu'ils ne soient tenus de se conformer à la loi en ce qui concerne les pratiques existantes de rétribution dans leurs établissements (terme défini) existants. (Article 20)
- 18. Création de la Commission de l'équité salariale de l'Ontario, qui peut traiter des oppositions aux programmes proposés d'équité salariale et des plaintes concernant les questions qui appartiennent à sa compétence. (Articles 16, 21 et 26)
- 19. Imposition d'amendes pour les contraventions à la loi ou aux ordonnances de la Commission. (Article 25)
- 20. Nomination d'agents de révision pour enquêter au sujet des oppositions et des plaintes et pour contrôler l'élaboration et la mise en oeuvre des programmes d'équité salariale. (Paragraphe 28 (2) et article 33)
- 21. Examen de la loi sept ans après son entrée en vigueur. (Article 36)

Bill 154

1986

An Act to provide for Pay Equity in the Broader Public Sector and in the Private Sector

CONTENTS

S			

PART I General

- Definitions
 Application
- 3. Purpose
- 4. Value determination
- 5. Achievement of pay equity
- 6. Pay equity required
- 7. Exclusions from determination
- 8. Prohibitions

PART II

Implementation: Broader Public Sector and Large Private Sector Employers

- 9. Definition
- 10. Application
- 11. Comparison of job classes
- 12. Pay equity plans required
- 13. Establishments with bargaining units
- 14. Establishments without bargaining units
- 15. Investigation by review officer and settlement
- 16. Hearing before Commission

PART III

Implementation: Small Private Sector Employers

- 17. Application
- 18. Pay equity plans
- 19. Posting of notice

Section

20. Transition

PART IV

Enforcement

- 21. Complaints
- 22. Investigation of complaints
- 23. Orders by review officers
- 24. Hearings
- 25. Offences and penalties

PART V

Administration

- 26. Commission established
- 27. Composition and appointment
- 28. Powers and duties of Commission
- 29. Exclusive jurisdiction of Commission
- 30. Testimony in civil proceedings
- 31. Annual report
- 32. Parties to proceedings
- 33. Review officers, duties
- 34. Entry to dwellings

PART VI

Regulations and Miscellaneous

- 35. Regulations
- 36. Review of Act
- 37. Moneys
- 38. Crown bound
- 39. Commencement
- 40. Short title

Projet de loi 154

Loi portant établissement de l'équité salariale dans le secteur parapublic et dans le secteur privé

TABLE DES MATIÈRES

					_	
A	r	1	ĭ	c	۱	¢

PARTIE I

Dispositions générales

- 1. Définitions
- 2. Champ d'application
- 3. Objet
- 4. Détermination de la valeur
- 5. Équité salariale atteinte
- 6. Équité salariale obligatoire
- 7. Exceptions
- 8. Interdictions

PARTIE II

Mise en oeuvre : employeurs du secteur parapublic et grands employeurs du secteur privé

- 9. Définition
- 10. Champ d'application
- 11. Comparaison des catégories d'emplois
- 12. Programmes obligatoires d'équité salariale
- 13. Établissements dotés d'unités de négociation
- 14. Établissements dépourvus d'unités de négociation
- 15. Enquête par l'agent de révision et règlement
- 16. Audience devant la Commission

PARTIE III

Mise en oeuvre : petits employeurs du secteur privé

- 17. Champ d'application
- 18. Programme d'équité salariale
- 19. Affichage de l'avis

Article

20. Disposition transitoire

PARTIE IV

Exécution de la loi

- 21. Plaintes
- 22. Enquêtes au sujet des plaintes
- 23. Ordres des agents de révision
- 24. Audiences
- 25. Infractions et peines

PARTIE V

Application de la loi

- 26. Création de la Commission
- 27. Constitution et nomination
- 28. Attributions de la Commission
- 29. Compétence exclusive de la Commission
- 30. Témoignages lors d'instances civiles
- 31. Rapport annuel
- 32. Parties à l'instance
- 33. Fonctions de l'agent de révision
- 34. Accès à un logement

PARTIE VI

Règlements et dispositions diverses

- 35. Règlements
- 36. Examen de la loi
- 37. Sommes d'argent
- 38. La Couronne est liée
- 39. Entrée en vigueur
- 40. Titre abrégé

Preamble

Whereas it is desirable that affirmative action be taken to redress gender discrimination in the compensation of employees employed in female job classes in the broader public sector and in the private sector in Ontario;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I

General

Definitions

1.—(1) In this Act,

"agent négociateur" R.S.O. 1980, c. 228 "bargaining agent" means a trade union as defined in the Labour Relations Act that has the status of exclusive bargaining agent under that Act in respect of any bargaining unit or units in an establishment and includes an organization representing employees to whom this Act applies where such organization has exclusive bargaining rights under any other Act in respect of such employees;

"secteur parapublic"

R.S.O. 1980, c. 418 "broader public sector" means the public sector other than the Crown in right of Ontario, with respect to employees who are public servants within the meaning of the *Public* Service Act, and other than The Niagara Parks Commission, Liquor Control Board of Ontario, Liquor Licence Board, Ontario Housing Corporation, Toronto Area Transit Operating Authority and Workers' Compensation Board;

"convention collective"

"collective agreement" means an agreement in writing between an employer and a bargaining agent covering terms and conditions of employment;

"Commission"

"Commission" means the Pay Equity Commission of Ontario established by this Act;

"rétribution"

"compensation" means all payments and benefits paid or provided to or for the benefit of a person who performs functions that entitle the person to be paid a fixed or ascertainable amount;

"date d'entrée en vigueur" "effective date" means the day this Act comes into force;

"employé"

"employee" means a person employed by an employer but does not include a student employed for his or her vacation period;

Attendu qu'il est souhaitable que des mesures concrètes Préambule soient prises aux fins d'éliminer la discrimination fondée sur le sexe en matière de rétribution des employés oeuvrant dans des catégories d'emplois à prédominance féminine dans les secteurs parapublic et privé en Ontario;

Sa Majesté, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit:

PARTIE I

Dispositions générales

1 (1) Les définitions qui suivent s'appliquent à la présente Définitions loi.

«agent de révision» Personne désignée comme agent de révi- «review officer» sion aux termes du paragraphe 28 (2).

«agent négociateur» S'entend d'un syndicat au sens de la «bargaining Loi sur les relations de travail, en sa qualité d'agent négociateur exclusif aux termes de cette loi à l'égard d'une ou chap. 228 de plusieurs unités de négociation au sein d'un établissement. S'entend en outre d'une organisation qui représente des employés auxquels s'applique la présente loi, si cette organisation est titulaire de droits exclusifs de négociation en vertu d'une autre loi à l'égard de ces employés.

L.R.O. 1980.

«catégorie d'emplois» Les postes qui présentent, au sein d'un «job class» établissement, des fonctions et des responsabilités semblables, qui exigent des qualités semblables, dont les procédures de recrutement sont semblables et qui offrent une même grille de rétribution.

«catégorie d'emplois à prédominance féminine» S'entend, sauf «female job lorsqu'il a été décidé qu'une catégorie d'emplois est une catégorie d'emplois à prédominance masculine telle que décrite à l'alinéa b) de la définition de «catégorie d'emplois à prédominance masculine»:

- d'une catégorie d'emplois dont 60 pour cent ou plus des membres sont des femmes;
- d'une catégorie d'emplois qu'un agent de révision ou que la Commission décide de désigner comme catégorie d'emplois à prédominance féminine ou d'une catégorie d'emplois que l'employeur avec, le cas échéant, l'assentiment de l'agent négociateur des employés de l'employeur, décide de désigner

"établisse-

ment"

"employeur"

"employer" means an employer in the broader public sector or in the private sector;

"establishment" means all of the employees of an employer employed in a geographic division or in such geographic divisions as are agreed upon under section 13 or decided upon under section 14;

"catégorie d'emplois à prédominance féminine" "female job class" means, except where there has been a decision that a job class is a male job class as described in clause (b) of the definition of "male job class",

- (a) a job class in which 60 per cent or more of the members are female,
- (b) a job class that a review officer or the Commission decides is a female job class or a job class that the employer, with the agreement of the bargaining agent, if any, for the employees of the employer, decides is a female job class;

"zone géographique" "geographic division" means,

R.S.O. 1980, c. 497

- (a) a county, territorial district or regional municipality described in the *Territorial Division Act*,
- (b) The Municipality of Metropolitan Toronto,

and for the purposes of this Act, the Territorial District of Sudbury and The Regional Municipality of Sudbury shall be considered to be one geographic division;

"catégorie d'emplois" "job class" means those positions in an establishment that have similar duties and responsibilities and require similar qualifications, are filled by similar recruiting procedures and have the same compensation schedule;

"taux de catégorie"

"job rate" means the highest rate of compensation for a job class;

"catégorie d'emplois à prédominance masculine"

- "male job class" means, except where there has been a decision that a job class is a female job class as described in clause (b) of the definition of "female job class",
 - (a) a job class in which 70 per cent or more of the members are male, or
 - (b) a job class that a review officer or the Commission decides is a male job class or a job class that the employer, with the agreement of the bargaining

comme catégorie d'emplois à prédominance féminine.

«catégorie d'emplois à prédominance masculine» S'entend, sauf lorsqu'il a été décidé qu'une catégorie d'emplois est une catégorie d'emplois à prédominance féminine telle que décrite à l'alinéa b) de la définition de «catégorie d'emplois à prédominance féminine» :

«male job

- a) d'une catégorie d'emplois dont 70 pour cent ou plus des membres sont des hommes;
- b) d'une catégorie d'emplois qu'un agent de révision ou que la Commission décide de désigner comme catégorie d'emplois à prédominance masculine ou d'une catégorie d'emplois que l'employeur avec, le cas échéant, l'assentiment de l'agent négociateur des employés de l'employeur, décide de désigner comme catégorie d'emplois à prédominance masculine.
- «Commission» La Commission de l'équité salariale de l'Onta- «Commission» rio créée par la présente loi.
- «convention collective» Convention écrite conclue entre un employeur et un agent négociateur et qui traite des conditions d'emploi.
- «date d'entrée en vigueur» Le jour de l'entrée en vigueur de «effective la présente loi.
- «employé» Personne employée par un employeur, à l'excep- «employée» tion d'un étudiant employé pendant ses vacances.
- «employeur» Employeur du secteur parapublic ou du secteur «employer» privé.
- «établissement» Tous les employés d'un employeur employés dans une même zone géographique ou des zones géographiques convenues aux termes de l'article 13 ou déterminées aux termes de l'article 14.
- «ministre» Le membre du Conseil des ministres à qui est con- «Minister» fiée l'application de la présente loi.
- «programme d'équité salariale» Document décrit à l'article 12. «pay equity plan»
- «règlements» Les règlements pris en application de la présente «regulations» loi.

agent, if any, for the employees of the employer, decides is a male job class;

1986

"ministre"

"Minister" means the member of the Executive Council to whom the administration of this Act is assigned;

"programme d'équité salariale" "pay equity plan" means a document as described in section 12;

"secteur privé" "private sector" means all of the employers who are not in the public sector;

"secteur public" "public sector" means all of the employers who are referred to in the Schedule;

"règlements"

"regulations" means the regulations made under this Act;

"agent de révision" "review officer" means a person designated as a review officer under subsection 28 (2).

Posting

(2) Where this Act requires that a document be posted in the work place, the employer shall post a copy of the document in prominent places in each work place for the establishment to which the document relates in such a manner that it may be read by all of the employees in the work place.

Calculation of number of employees

(3) If Part II or III applies to an employer, a reference in this Act to the number of employees of the employer shall be deemed to be a reference to the average number of employees employed in Ontario by the employer during the twelvemonth period preceding the effective date or during the period from the day the first employee commenced employment in Ontario with the employer until the effective date, whichever period is shorter.

«rétribution» Tous les paiements et avantages versés ou accordés à la personne qui exerce des fonctions lui donnant droit au versement d'une somme fixe ou vérifiable, ou au profit de cette personne.

«secteur parapublic» S'entend du secteur public à l'exception de la Couronne du chef de l'Ontario en ce qui concerne les employés qui sont des fonctionnaires au sens de la Loi sur L.R.O. 1980, la fonction publique, et à l'exception de la Commission des parcs du Niagara, de la Régie des alcools de l'Ontario, de la Commission des permis de vente d'alcool de l'Ontario, de la Société de logement de l'Ontario, de la Régie des transports en commun de la région de Toronto et de la Commission des accidents du travail.

«broader public sector»

«secteur privé» Tous les employeurs qui ne font pas partie du «private secteur public.

«secteur public» Tous les employeurs qui sont mentionnés à «public l'annexe.

«taux de catégorie» Taux de rétribution le plus élevé relié à «job rate» une catégorie d'emplois donnée.

«zone géographique» S'entend :

«geographic division»

d'un comté, d'un district territorial, d'un territoire a) ou d'une municipalité régionale au sens de la Loi sur la division territoriale;

L.R.O. 1980, chap. 497

b) de la municipalité de la communauté urbaine de Toronto.

Pour l'application de la présente loi, le district territorial de Sudbury et la municipalité régionale de Sudbury sont considérés comme formant une seule zone géographique.

(2) Lorsque la présente loi exige l'affichage d'un écrit sur Affichage les lieux de travail, l'employeur en affiche un exemplaire dans des endroits bien en vue dans chaque lieu de travail de l'établissement auquel se rapporte l'écrit, de façon que tous les employés puissent le consulter.

(3) Si les parties II ou III s'appliquent à un employeur, la Calcul du mention dans la présente loi du nombre d'employés de l'employeur est réputée une mention du nombre moyen d'employés de l'employeur en Ontario au cours de la plus courte des périodes suivantes: soit la période de douze mois qui précède la date d'entrée en vigueur, soit la période qui se situe entre la date du début en Ontario de l'emploi, au service

Decisions re job classes (4) In deciding or agreeing whether a job class is a female job class or a male job class, regard shall be had to the historical incumbency of the job class, gender stereotypes of fields of work and such other criteria as may be prescribed by the regulations.

Application

- 2.—(1) This Act applies,
 - (a) to all employers in the broader public sector;
 - (b) to those employers in the private sector who employ ten or more employees in Ontario; and
 - (c) to the employees of employers to whom this Act applies and to the bargaining agents, if any, of the employees.

Idem

(2) If at any time after the coming into force of this Act an employer employs ten or more employees in Ontario, this Act applies with respect to the employer although the number of employees is subsequently reduced to fewer than ten.

Purpose

3.—(1) The purpose of this Act is to redress systemic gender discrimination in compensation for work performed by employees in female job classes.

Identification of systemic gender discrimination (2) Systemic gender discrimination in compensation shall be identified by undertaking comparisons between each female job class in an establishment and the male job classes in the establishment in terms of relative compensation and in terms of the relative value of the work performed.

Value determination **4.** For the purposes of this Act, the criterion to be applied in determining value of work shall be a composite of the skill, effort and responsibility normally required in the performance of the work and the conditions under which it is normally performed.

Achievement of pay equity 5.—(1) For the purposes of this Act, pay equity is achieved when the job rate for the female job class that is the subject of the comparison is at least equal to the job rate for a male job class in the same establishment where the work performed in the two job classes is of equal or comparable value.

de l'employeur, du premier employé et la date d'entrée en vigueur.

(4) Aux fins de décider si une catégorie d'emplois est une Détermination catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine, ou de convenir de la prédominance d'une catégorie d'emplois, il est tenu compte du sexe des personnes qui exercent traditionnellement ces emplois, des stéréotypes sexuels attachés à des domaines d'emplois, ainsi que des autres critères qui peuvent être prescrits par les règlements.

de la catégorie d'emplois

2 (1) La présente loi s'applique :

Champ d'application

- à tous les employeurs du secteur parapublic; a)
- b) aux employeurs du secteur privé qui emploient dix employés ou plus en Ontario;
- c) aux employés des employeurs auxquels s'applique la présente loi, ainsi qu'aux agents négociateurs de ces employés, le cas échéant.
- (2) Lorsqu'un employeur emploie dix employés ou plus en Idem Ontario après l'entrée en vigueur de la présente loi, celle-ci s'applique à lui, même si le nombre de ses employés est par la suite réduit à moins de dix.

3 (1) La présente loi a pour objet d'éliminer la discrimina- Objet tion systémique entre les sexes, en ce qui concerne la rétribution du travail effectué par les employés dans les catégories d'emplois à prédominance féminine.

(2) Le repérage de la discrimination systémique entre les sexes en ce qui concerne la rétribution se fait au moyen de comparaisons établies entre chacune des catégories d'emplois que entre les à prédominance féminine et les catégories d'emplois à prédominance masculine dans un même établissement au niveau de la rétribution proportionnelle et de la valeur proportionnelle du travail accompli.

Repérage de la discrimination systémi-

4 Pour l'application de la présente loi, le critère qui sert à déterminer la valeur du travail se fonde sur l'habileté, l'effort et la responsabilité qu'exige normalement l'accomplissement de ce travail, ainsi que sur les conditions dans lesquelles il est normalement effectué.

Détermination de la valeur

5 (1) Pour l'application de la présente loi, l'équité salariale Équité salaest atteinte lorsque le taux de catégorie relié à la catégorie d'emplois à prédominance féminine qui fait l'objet de la com-

riale atteinte

Idem

(2) Where there is no male job class with which to make a comparison for the purposes of subsection (1), pay equity is achieved when the job rate for the female job class that is the subject of the comparison is at least equal to the job rate of a male job class in the same establishment that at the time of comparison had a higher job rate but performs work of lower value than the female job class.

Basis of comparison

- (3) If more than one comparison is possible between a female job class in an establishment and male job classes in the same establishment, pay equity is achieved when the job rate for the female job class is at least as great as the job rate for the male job class,
 - (a) with the lowest job rate, if the work performed in both job classes is of equal or comparable value; and
 - (b) with the highest job rate, if the work performed in the male job class is of less value.

Idem

- (4) Comparisons required by this Act,
 - (a) for job classes inside a bargaining unit, shall be made between job classes in the bargaining unit;
 and
 - (b) for job classes outside any bargaining unit, shall be made between job classes that are outside any bargaining unit.

Idem

(5) If, after applying subsection (4), no male job class is found in which the work performed is of equal or comparable value to that of the female job class that is the subject of the comparison, the female job class shall be compared to male job classes throughout the establishment.

paraison est au moins égal au taux de catégorie relié à une catégorie d'emplois à prédominance masculine dans le même établissement, si le travail effectué au niveau des deux catégories est de valeur égale ou comparable.

(2) S'il n'existe aucune catégorie d'emplois à prédominance Idem masculine avec laquelle peut être établie une comparaison pour l'application du paragraphe (1), l'équité salariale est atteinte lorsque le taux de catégorie relié à la catégorie d'emplois à prédominance féminine qui fait l'objet de la comparaison est au moins égal au taux de catégorie d'une catégorie d'emplois à prédominance masculine du même établissement qui avait, au moment de la comparaison, un taux de catégorie supérieur, mais qui effectue un travail d'une valeur inférieure à ceux de la catégorie d'emplois à prédominance féminine.

(3) Si une catégorie d'emplois à prédominance féminine Fondement dans un établissement et des catégories d'emplois à prédominance masculine dans le même établissement se prêtent à plusieurs comparaisons, l'équité salariale est atteinte lorsque le taux de catégorie relié à la catégorie d'emplois à prédominance féminine est au moins égal au taux de catégorie relié à la catégorie d'emplois à prédominance masculine :

- a) qui a le taux de catégorie le plus bas, si le travail effectué dans les deux catégories d'emplois est de valeur égale ou comparable;
- b) qui a le taux de catégorie le plus élevé, si le travail effectué dans la catégorie d'emplois à prédominance masculine est de valeur inférieure.
- (4) Les comparaisons exigées par la présente loi sont Idem établies :
 - entre des catégories d'emplois qui appartiennent à a) l'unité de négociation, en ce qui concerne les catégories d'emplois appartenant à une unité de négociation:
 - b) entre des catégories d'emplois qui n'appartiennent à aucune unité de négociation, en ce qui concerne les catégories d'emplois n'appartenant pas à une unité de négociation.
- (5) Lorsque, après l'application du paragraphe (4), il ne se Idem trouve aucune catégorie d'emplois à prédominance masculine dans laquelle s'effectue un travail de valeur égale ou comparable au travail qui s'effectue dans la catégorie d'emplois à prédominance féminine qui fait l'objet de la comparaison, celle-ci

Pay equity required

6.—(1) Every employer shall establish and maintain compensation practices that provide for pay equity in every establishment of the employer.

Idem

(2) No employer or bargaining agent shall bargain for or agree to compensation practices that, if adopted, would cause a contravention of subsection (1).

Exclusions from determination

- 7.—(1) This Act does not apply so as to prevent differences in compensation between a female job class and a male job class if the employer is able to show that the difference is the result of.
 - (a) a formal seniority system that does not discriminate on the basis of gender;
 - (b) a temporary employee training or development assignment that is equally available to male and female employees and that leads to career advancement for those involved in the program;
 - (c) a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of gender;
 - (d) the personnel practice known as red-circling, where, based on a gender-neutral re-evaluation process, the value of a position has been down-graded and the compensation of the incumbent employee has been frozen or his or her increases in compensation have been curtailed until the compensation for the downgraded position is equivalent to or greater than the compensation payable to the incumbent; or
 - (e) a skills shortage that is causing a temporary inflation in compensation because the employer is encountering difficulties in recruiting employees with the requisite skills for positions in the job class.

Idem

(2) After pay equity has been achieved in an establishment, this Act does not apply so as to prevent differences in com-

est comparée aux catégories d'emplois à prédominance masculine de l'ensemble de l'établissement.

6 (1) L'employeur établit et maintient des pratiques de Équité rétribution assurant l'équité salariale dans chacun de ses obligatoire établissements.

(2) Il est interdit à l'employeur et à l'agent négociateur de Idem négocier en vue d'obtenir l'établissement ou le maintien de pratiques de rétribution qui, si elles étaient adoptées, entraîneraient une contravention au paragraphe (1). Il leur est également interdit de convenir de telles pratiques.

7 (1) La présente loi n'a pas pour effet d'empêcher un Exceptions écart de rétribution entre une catégorie d'emplois à prédominance féminine et une catégorie d'emplois à prédominance masculine, si l'employeur peut démontrer que l'écart résulte :

- d'un système organisé d'ancienneté exempt de discrimination fondée sur le sexe:
- d'un programme d'affectations temporaires de forb) mation ou de perfectionnement des employés dont peuvent se prévaloir également les employés féminins et les employés masculins et qui mène à l'avancement de ceux qui y participent;
- d'un régime de rétribution au mérite fondé sur un c) système organisé d'évaluation du rendement préalablement porté à la connaissance des employés et exempt de discrimination fondée sur le sexe;
- de la pratique de gestion du personnel dite du d) «salaire étoilé» lorsque, à la suite d'un processus non sexiste de réévaluation, un poste a été déclassé et que la rétribution de l'employé a été bloquée ou que toute augmentation de sa rétribution a été suspendue jusqu'à ce que la rétribution reliée au poste déclassé devienne égale ou supérieure à la rétribution de l'employé;
- de l'absence de main-d'oeuvre qualifiée qui engene) dre une inflation temporaire de la rétribution provoquée par la difficulté qu'éprouve l'employeur à recruter des employés satisfaisant aux exigences des postes au sein d'une catégorie d'emplois.
- (2) Lorsque l'équité salariale est atteinte dans un établisse- Idem ment, la présente loi n'a pas pour effet d'empêcher des écarts de rétribution entre une catégorie d'emplois à prédominance

pensation between a female job class and a male job class if the employer is able to show that the difference is the result of differences in bargaining strength.

Idem

(3) A position that an employer designates as a position that provides employment on a casual basis may be excluded in determining whether a job class is a female job class or a male job class and need not be included in compensation adjustments under a gay equity plan.

Idem

- (4) A position shall not be designated under subsection (3) if,
 - (a) the work is performed for at least one-third of the normal work period that applies to similar full-time work;
 - (b) the work is performed on a seasonal basis in the same position for the same employer; or
 - (c) the work is performed on a regular and continuing basis, although for less than one-third of the normal work period that applies to similar full-time work.

Reduction of compensation prohibited

8.—(1) An employer shall not reduce the compensation payable to any employee or reduce the rate of compensation for any position in order to achieve pay equity.

Intimidation prohibited

- (2) No employer, employee or bargaining agent and no one acting on behalf of an employer, employee or bargaining agent shall intimidate, coerce or penalize, or discriminate against, a person,
 - (a) because the person may participate, or is participating, in a proceeding under this Act;
 - (b) because the person has made, or may make, a disclosure required in a proceeding under this Act; or
 - (c) because the person is exercising, or may exercise, any right under this Act.

féminine et une catégorie d'emplois à prédominance masculine si l'employeur peut démontrer que l'écart résulte de différences au niveau du pouvoir de négociation.

- (3) Aux fins de déterminer si une catégorie d'emplois est Idem une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine, il n'est pas nécessaire de tenir compte des postes que l'employeur désigne comme postes qui procurent de l'emploi occasionnel. Les postes ainsi désignés peuvent également être exclus lors des rajustements de la rétribution effectués en vertu d'un programme d'équité salariale.
- (4) Un poste n'est pas désigné aux termes du paragraphe Idem (3) si, selon le cas:
 - la durée du travail est égale ou supérieure au tiers a) de la période normale de travail qui s'applique à un travail semblable à plein temps;
 - le travail est effectué sur une base saisonnière pour b) le compte du même employeur et dans le cadre du même poste;
 - c) le travail est effectué sur une base régulière et continue, quoique durant une période inférieure au tiers de la période normale de travail qui s'applique à un travail semblable à plein temps.
- **8** (1) L'employeur ne doit pas diminuer la rétribution Réduction de payable à un employé ni réduire le taux de rétribution interdite rattaché à un poste afin d'atteindre l'équité salariale.

(2) Il est interdit à l'employeur, à l'employé, à l'agent négo- Manoeuvres ciateur, ainsi qu'à leurs mandataires d'intimider, de contrain- interdites dre, de pénaliser une personne ou d'exercer une discrimination à son égard pour l'un des motifs suivants :

- a) elle participe ou pourrait participer à une instance intentée en vertu de la présente loi;
- b) elle a déjà fait ou pourrait faire une divulgation exigée lors d'une instance intentée en vertu de la présente loi:
- c) elle exerce ou pourrait exercer un droit en vertu de la présente loi.

PARTII

Implementation: Broader Public Sector and Large Private Sector Employers

Definition "date d'affichage obligatoire"

- **9.** In this Part, "mandatory posting date" means,
 - (a) the first anniversary of the effective date, in respect of employers in the broader public sector;
 - (b) the second anniversary of the effective date, in respect of employers in the private sector who have at least 500 employees on the effective date;
 - (c) the third anniversary of the effective date, in respect of employers in the private sector who have at least 100 but fewer than 500 employees on the effective date;
 - (d) the fourth anniversary of the effective date, in respect of employers in the private sector who have at least fifty but fewer than 100 employees on the effective date and who have posted a notice under section 19; and
 - (e) the fifth anniversary of the effective date, in respect of employers in the private sector who have at least ten but fewer than fifty employees on the effective date and who have posted a notice under section 19.

Application

10.—(1) This Part applies only to employers who have employees on the effective date.

Nonapplication (2) Subject to section 19, this Part does not apply to an employer in the private sector who has fewer than 100 employees on the effective date.

Comparison of job classes

11. Before the mandatory posting date, every employer to whom this Part applies shall, using a gender-neutral comparison system, compare the female job classes in each establishment of the employer with the male job classes in the same establishment to determine whether pay equity exists for each female job class.

PARTIE II

Mise en oeuvre : employeurs du secteur parapublic et grands employeurs du secteur privé

9 Dans la présente partie, «date d'affichage obligatoire» Définition s'entend:

posting date»

- du premier anniversaire de la date d'entrée en a) vigueur, en ce qui concerne les employeurs du secteur parapublic;
- du deuxième anniversaire de la date d'entrée en b) vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins 500 employés à leur service à la date d'entrée en vigueur:
- c) du troisième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins 100, mais moins de 500 employés à leur service à la date d'entrée en vigueur;
- d) du quatrième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins cinquante, mais moins de 100 employés à leur service à la date d'entrée en vigueur, et qui ont affiché l'avis visé à l'article 19;
- e) du cinquième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins dix, mais moins de cinquante employés à leur service à la date d'entrée en vigueur, et qui ont affiché l'avis visé à l'article 19.
- 10 (1) La présente partie ne s'applique qu'aux employeurs Champ qui ont des employés à leur service à la date d'entrée en vigueur.

d'application

(2) Sous réserve de l'article 19, la présente partie ne s'appli- Exclusion que pas à l'employeur du secteur privé qui a moins de 100 employés à son service à la date d'entrée en vigueur.

11 Avant la date d'affichage obligatoire, l'employeur Comparaison auquel s'applique la présente partie établit des comparaisons, des categories des categories des categories des categories de ca au moyen d'un système non sexiste de comparaison, entre les catégories d'emplois à prédominance féminine de chacun de ses établissements et les catégories d'emplois à prédominance masculine des mêmes établissements aux fins de déterminer si

Pay equity plans required

- **12.**—(1) Documents, to be known as pay equity plans, shall be prepared in accordance with this Part to provide for pay equity for the female job classes in each establishment of every employer to whom this Part applies and, without restricting the generality of the foregoing,
 - (a) shall identify the establishment to which the plan applies; and
 - (b) shall identify all job classes which formed the basis of the comparisons under section 11.

Idem

- (2) If both female job classes and male job classes exist in an establishment, every pay equity plan for the establishment,
 - (a) shall describe the gender-neutral comparison system used for the purposes of section 11;
 - (b) shall set out the results of the comparisons carried out under section 11;
 - (c) shall identify all positions and job classes in which differences in compensation are permitted by subsection 7 (1), (2) or (3) and give the reasons for relying on such subsection;
 - (d) shall, with respect to all female job classes for which pay equity does not exist according to the comparisons under section 11, describe how the compensation in those job classes will be adjusted to achieve pay equity; and
 - (e) shall set out the date on which the first adjustments in compensation will be made under the plan, which date shall not be later than,
 - (i) the second anniversary of the effective date, in respect of employers in the broader public sector,
 - (ii) the third anniversary of the effective date, in respect of employers in the private sector who have at least 500 employees on the effective date,

l'équité salariale existe à l'égard de chaque catégorie d'emplois à prédominance féminine.

12 (1) Il est élaboré, conformément à la présente partie, Programmes des documents connus sous l'appellation de programmes d'équité d'équité salariale, visant à assurer l'équité salariale à l'égard salariale des catégories d'emplois à prédominance féminine au sein de chacun des établissements de chaque employeur auquel s'applique la présente partie. Ces programmes comprennent notamment:

- le repérage de l'établissement visé par le programme;
- le repérage de toutes les catégories d'emplois sur lesquelles se fondent les comparaisons visées à l'article 11.
- (2) Si un établissement comporte à la fois des catégories Idem d'emplois à prédominance féminine et des catégories d'emplois à prédominance masculine, chaque programme d'équité salariale relatif à l'établissement :

expose le système non sexiste de comparaison utia) lisé pour l'application de l'article 11;

- b) énonce les résultats des comparaisons établies aux termes de l'article 11;
- repère tous les postes et toutes les catégories d'emc) plois dans lesquels les paragraphes 7 (1), (2) ou (3) permettent des écarts de rétribution, et donne les motifs du recours à ces paragraphes;
- expose, à l'égard de toutes les catégories d'emplois d) à prédominance féminine où l'équité salariale n'existe pas selon les comparaisons établies aux termes de l'article 11, le mode de rajustement de la rétribution choisi pour atteindre l'équité salariale;
- énonce la date à laquelle seront effectués les pree) miers rajustements de la rétribution en vertu du programme. Cette date ne peut être postérieure :
 - (i) au deuxième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur parapublic,
 - (ii) au troisième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs

- (iii) the fourth anniversary of the effective date, in respect of employers in the private sector who have at least 100 but fewer than 500 employees on the effective date,
- (iv) the fifth anniversary of the effective date, in respect of employers in the private sector who have at least fifty but fewer than 100 employees on the effective date and who have posted a notice under section 19, and
- (v) the sixth anniversary of the effective date, in respect of employers in the private sector who have at least ten but fewer than fifty employees on the effective date and who have posted a notice under section 19.

Idem

- (3) A pay equity plan shall provide that the female job class or classes that have, at any time during the implementation of the plan, the lowest job rate shall receive increases in rates of compensation under the plan that are greater than the increases under the plan for other female job classes until such time as the job rate for the female job class or classes receiving the greater increases is equal to the lesser of,
 - (a) the job rate required to achieve pay equity; and
 - (b) the job rate of the female job class or classes entitled to receive an adjustment under the plan with the next lowest job rate.

Minimum adjustments

(4) The first adjustments in compensation under a pay equity plan are payable as of the date provided for in clause (2) (e) and shall be such that the combined compensation payable under all pay equity plans of the employer during the twelve-month period following the first adjustments shall be increased by an amount that is not less than the lesser of,

- du secteur privé qui ont au moins 500 employés à leur service à la date d'entrée en vigueur,
- (iii) au quatrième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins 100, mais moins de 500 employés à leur service à la date d'entrée en vigueur,
- (iv) au cinquième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins cinquante, mais moins de 100 employés à leur service à la date d'entrée en vigueur, et qui ont affiché l'avis visé à l'article 19.
- (v) au sixième anniversaire de la date d'entrée en vigueur, en ce qui concerne les employeurs du secteur privé qui ont au moins dix, mais moins de cinquante employés à leur service à la date d'entrée en vigueur, et qui ont affiché l'avis visé à l'article 19.
- (3) Un programme d'équité salariale prévoit qu'il sera Idem accordé à la catégorie ou aux catégories d'emplois à prédominance féminine qui ont, pendant la période de mise en oeuvre du programme, le taux de catégorie le plus bas, une augmentation du taux de rétribution aux termes du programme qui est supérieure aux augmentations accordées aux termes du programme aux autres catégories d'emplois à prédominance féminine, jusqu'à ce que le taux de catégorie de la catégorie ou des catégories d'emplois à prédominance féminine qui reçoivent l'augmentation supérieure soit égal au moins élevé des taux suivants :
 - a) le taux de catégorie nécessaire pour atteindre l'équité salariale:
 - le taux de catégorie de la catégorie ou des catégob) ries d'emplois à prédominance féminine ayant droit à un rajustement aux termes du programme et dont le taux de catégorie se classe immédiatement audessus de celui de la catégorie ou des catégories d'emplois visées.
- (4) Les premiers rajustements de la rétribution en vertu Rajustements d'un programme d'équité salariale sont versables à la date prévue à l'alinéa (2) e) et sont tels que la rétribution combinée payable aux termes de l'ensemble des programmes

- (a) 1 per cent of the employer's payroll during the twelve-month period preceding the first adjustments; and
- (b) the amount required to achieve pay equity.

Idem

- (5) An employer shall make adjustments in rates of compensation until pay equity is achieved under the pay equity plans of the employer such that during the twelve-month period following each anniversary of the first adjustments the combined compensation payable shall be increased by an amount that is not less than the lesser of,
 - (a) 1 per cent of the employer's payroll during the twelve-month period preceding the anniversary; and
 - (b) the amount required to achieve pay equity.

Maximum adjustments

(6) Except for the purpose of making retroactive adjustments in compensation under a pay equity plan or unless required to do so by an order described in clause 35 (g), nothing in this Act requires an employer to increase compensation payable under the pay equity plans of the employer during a twelve-month period in an amount greater than 1 per cent of the employer's payroll during the preceding twelve-month period.

Definition "feuille de paie" (7) In this section, "payroll" means the total of all wages and salaries payable to the employees in Ontario of the employer.

Pay equity plan binding

(8) A pay equity plan that is approved under this Part binds the employer and the employees to whom the plan applies and their bargaining agent, if any.

Plan to prevail

(9) A pay equity plan that is approved under this Part prevails over all relevant collective agreements and the adjustments to rates of compensation required by the plan shall be deemed to be incorporated into and form part of the relevant collective agreements.

d'équité salariale de l'employeur au cours des douze mois qui suivent les premiers rajustements est majorée d'une somme qui n'est pas inférieure à la moins élevée des deux sommes suivantes:

- a) la somme qui représente 1 pour cent de la feuille de paie de l'employeur relative à la période de douze mois qui précède les premiers rajustements;
- b) la somme nécessaire pour atteindre l'équité salariale.
- (5) L'employeur effectue des rajustements aux taux de rétri- Idem bution jusqu'à ce que soit atteinte l'équité salariale en vertu des programmes d'équité salariale de l'employeur. Ces rajustements additionnels sont effectués de façon que la rétribution combinée payable au cours de la période de douze mois qui suit chaque anniversaire des premiers rajustements soit majorée d'une somme qui n'est pas inférieure à la moins élevée des deux sommes suivantes :

- la somme qui représente 1 pour cent de la feuille de a) paie de l'employeur relative à la période de douze mois qui précède l'anniversaire;
- la somme nécessaire pour atteindre l'équité salab) riale.
- (6) Sauf dans le but d'effectuer des rajustements rétroactifs Rajustements à la rétribution en vertu d'un programme d'équité salariale ou à moins qu'il y soit tenu aux termes d'une ordonnance visée à l'alinéa 35 g), la présente loi n'a pas pour effet d'obliger un employeur à majorer la rétribution payable aux termes des programmes d'équité salariale de l'employeur au cours d'une période de douze mois d'une somme qui représente plus de 1 pour cent de la feuille de paie de l'employeur relative à la période précédente de douze mois.

maximaux

(7) Dans le présent article, «feuille de paie» s'entend de la totalité des salaires et traitements payables aux employés de l'employeur en Ontario.

Définition «payroll»

(8) Le programme d'équité salariale approuvé aux termes Le prode la présente partie lie l'employeur et les employés auxquels il s'applique, ainsi que leur agent négociateur, le cas échéant.

gramme d'équité salariale lie les parties

(9) Le programme d'équité salariale approuvé aux termes Le prode la présente partie l'emporte sur toute convention collective pertinente. Les rajustements des taux de rétribution qu'exige

gramme l'emporte

Deemed compliance

(10) Every employer who prepares and implements a pay equity plan under this Part shall be deemed not to be in contravention of subsection 6 (1) with respect to those employees covered by the plan or plans that apply to the employees but only with respect to those compensation practices that existed immediately before the effective date.

Establishments with bargaining units 13.—(1) In an establishment in which any of the employees are represented by a bargaining agent, there shall be a pay equity plan for each bargaining unit and a pay equity plan for that part of the establishment that is not in any bargaining unit.

Bargaining unit plans

- (2) The employer and the bargaining agent for a bargaining unit shall negotiate in good faith and endeavour to agree, before the mandatory posting date, on,
 - (a) the gender-neutral comparison system used for the purposes of section 11; and
 - (b) a pay equity plan for the bargaining unit.

Idem

- (3) As part of the negotiations required by subsection (2), the employer and the bargaining agent may agree, for the purposes of the pay equity plan,
 - (a) that the establishment of the employer includes two or more geographic divisions; and
 - (b) that a job class is a female job class or a male job class.

Posting of plan

(4) When an employer and a bargaining agent agree on a pay equity plan, they shall execute the agreement and, on or before the mandatory posting date, the employer shall post a copy of the plan in the work place.

Deemed approval and first adjustments

(5) When a pay equity plan has been executed by an employer and a bargaining agent, the plan shall be deemed to have been approved by the Commission and, on the day provided for in the plan, the employer shall make the first adjustments in compensation required to achieve pay equity.

le programme sont réputés incorporés aux conventions collectives pertinentes et en faire partie intégrante.

(10) L'employeur qui prépare et met en oeuvre un pro-Conformité gramme d'équité salariale aux termes de la présente partie est réputé ne pas contrevenir au paragraphe 6 (1) en ce qui concerne les employés visés par le plan ou les plans qui s'appliquent aux employés, mais seulement en ce qui a trait aux pratiques de rétribution qui existaient immédiatement avant la date d'entrée en vigueur.

réputée

13 (1) Il doit être élaboré, dans tout établissement où des Établisseemployés sont représentés par un agent négociateur, un programme d'équité salariale relié à chaque unité de négociation, négociation ainsi qu'un programme d'équité salariale relié à la partie de l'établissement dont les membres n'appartiennent pas à une unité de négociation.

(2) L'employeur et l'agent négociateur d'une unité de négo- Programmes ciation négocient de bonne foi et s'efforcent de convenir, unité de avant à la date d'affichage obligatoire :

négociation

- a) du système non sexiste de comparaison utilisé pour l'application de l'article 11;
- d'un programme d'équité salariale relié à l'unité de négociation.
- (3) Dans le cadre des négociations exigées par le paragra- Idem phe (2), l'employeur et l'agent négociateur peuvent, pour les fins du programme d'équité salariale, convenir de ce qui suit :

- que l'établissement de l'employeur comprend deux ou plusieurs zones géographiques;
- qu'une catégorie d'emplois est une catégorie d'emb) plois à prédominance féminine ou une catégorie d'emplois à prédominance masculine.
- (4) L'employeur et l'agent négociateur qui ont convenu d'un programme d'équité salariale y apposent leur signature. À la date d'affichage obligatoire ou antérieurement à celle-ci, l'employeur affiche une copie du programme sur les lieux de travail.

Affichage du programme

(5) Le programme d'équité salariale qui porte la signature de l'employeur et celle de l'agent négociateur est réputé avoir reçu l'approbation de la Commission. L'employeur, à la date rajustements prévue au programme, effectue les premiers rajustements de la rétribution nécessaires pour atteindre l'équité salariale.

Approbation réputée et premiers

Failure to agree (6) Where an employer and a bargaining agent fail to agree on a pay equity plan by the mandatory posting date, the employer, forthwith after that date, shall give notice of the failure to the Commission.

Idem

(7) Subsection (6) does not prevent the bargaining agent from notifying the Commission of a failure to agree on a pay equity plan by the mandatory posting date.

Nonbargaining unit plan (8) An employer shall prepare a pay equity plan for that part of the employer's establishment that is outside any bargaining unit in the establishment and, on or before the mandatory posting date, shall post a copy of the plan in the work place.

Idem

(9) Subsections 14 (2) to (8) apply to a pay equity plan described in subsection (8).

Establishments without bargaining units

14.—(1) In an establishment where no employee is represented by a bargaining agent, the employer shall prepare a pay equity plan for the employer's establishment and the employer, on or before the mandatory posting date, shall post a copy of the plan in the work place.

Idem

- (2) For the purposes of a pay equity plan required by this section or subsection 13 (8), the employer may decide,
 - (a) that the establishment of the employer includes two or more geographic divisions; and
 - (b) that a job class is a female job class or a male job class.

Idem

(3) An agreement under section 13 between an employer and a bargaining agent shall not affect any pay equity plan required by this section or subsection 13 (8).

Employee review

(4) The employees to whom a pay equity plan required by this section or subsection 13 (8) applies shall have until the ninetieth day after the mandatory posting date to review and submit comments to the employer on the plan.

Changes

(5) If as a result of comments received during the review period referred to in subsection (4), the employer is of the opinion that a pay equity plan should be changed, the employer may change the plan.

(6) Si l'employeur et l'agent négociateur n'ont pas convenu d'un programme d'équité salariale à la date d'affichage obligatoire, l'employeur en avise sans délai la Commission.

Absence d'entente

(7) Le paragraphe (6) n'a pas pour effet d'empêcher l'agent Idem négociateur d'aviser la Commission du défaut de convenir d'un programme d'équité salariale à la date d'affichage obligatoire ou antérieurement à celle-ci-

(8) L'employeur élabore un programme d'équité salariale Programme destiné aux employés de son établissement qui n'appartiennent à aucune des unités de négociation de l'établissement. À la date d'affichage obligatoire ou antérieurement à celle-ci, il affiche une copie du programme sur les lieux de travail.

une unité de

(9) Les paragraphes 14 (2) à (8) s'appliquent au programme Idem d'équité salariale décrit au paragraphe (8).

14 (1) L'employeur dont l'établissement ne compte aucun Établisseemployé représenté par un agent négociateur élabore un programme d'équité salariale à l'égard de son établissement. L'employeur, à la date d'affichage obligatoire ou antérieurement à celle-ci, affiche une copie du programme sur les lieux de travail

d'unités de négociation

(2) Pour l'application du programme d'équité salariale exigé Idem par le présent article ou par le paragraphe 13 (8), l'employeur peut décider :

- a) que son établissement comprend deux ou plusieurs zones géographiques;
- b) qu'une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine.

(3) L'entente intervenue en vertu de l'article 13 entre l'em- Idem ployeur et l'agent négociateur n'a pas d'incidence sur le programme d'équité salariale exigé par le présent article ou par le paragraphe 13 (8).

(4) Les employés visés par un programme d'équité salariale exigé par le présent article ou par le paragraphe 13 (8) peuvent examiner le programme et présenter leurs observations à l'employeur jusqu'au quatre-vingt-dixième jour suivant la date d'affichage obligatoire.

Examen par

(5) L'employeur qui, à la suite des observations reçues au Modification cours de la période d'examen visée au paragraphe (4), est

Posting of notice

(6) Not later than seven days after the end of the review period referred to in subsection (4), the employer shall post in the work place a notice stating whether the pay equity plan has been amended under this section and, if the plan has been amended, the employer shall also post a copy of the amended plan with the amendments clearly indicated.

Objections

(7) Any employee or group of employees to whom a pay equity plan applies, within thirty days following a posting in respect of the plan under subsection (6), may file a notice of objection with the Commission whether or not the employee or group of employees has submitted comments to the employer under subsection (4).

Deemed approval and first adjustments (8) If no objection in respect of a pay equity plan is filed with the Commission under subsection (7), the plan shall be deemed to have been approved by the Commission and, on the day provided for in the plan, the employer shall make the first adjustments in compensation required to achieve pay equity.

Investigation by review officer and settlement

15.—(1) If the Commission,

- (a) is advised by an employer or a bargaining agent that no agreement has been reached on a pay equity plan under section 13; or
- (b) receives a notice of objection under subsection 14 (7),

a review officer shall investigate the matter and endeavour to effect a settlement.

Orders by review officer

(2) If the review officer is unable to effect a settlement as provided for in subsection (1), he or she shall, by order, decide all outstanding matters.

Posting of plan

(3) Where a review officer effects a settlement under subsection (1) or makes an order under subsection (2), the employer shall forthwith post in the work place a copy of the pay equity plan that reflects the settlement or order.

Objections

(4) Where a pay equity plan has been posted under subsection (3), objections with respect to the plan may be filed with the Commission within thirty days of the posting as follows:

d'avis que des modifications au programme d'équité salariale s'imposent, peut y apporter des modifications.

(6) Dans les sept jours qui suivent la fin de la période Affichage d'examen visée au paragraphe (4), l'employeur affiche sur les lieux de travail un avis qui indique si le programme d'équité salariale a été modifié ou non aux termes du présent article. Si le programme a été modifié, l'employeur affiche également une copie du programme modifié sur laquelle les modifications sont clairement indiquées.

d'un avis

(7) Dans les trente jours de l'affichage concernant un pro- Oppositions gramme d'équité salariale aux termes du paragraphe (6), l'employé ou le groupe d'employés visés par le programme peuvent déposer un avis d'opposition auprès de la Commission, qu'ils aient présenté ou non leurs observations à l'employeur aux termes du paragraphe (4).

(8) S'il n'est déposé aucune opposition à un programme Approbation d'équité salariale auprès de la Commission en vertu du paragraphe (7), le programme est réputé avoir reçu l'approbation rajustements de la Commission. L'employeur, à la date prévue au programme, effectue les premiers rajustements de la rétribution nécessaires pour atteindre l'équité salariale.

réputée et premiers

15 (1) Lorsque la Commission :

Enquête par l'agent de révision et règlement

- ou bien est avisée par l'employeur ou l'agent négoa) ciateur qu'aucune entente n'est intervenue au sujet du programme d'équité salariale aux termes de l'article 13:
- b) ou bien reçoit l'avis d'opposition visé au paragraphe 14 (7),

un agent de révision mène une enquête à ce sujet et tente d'amener les parties à accepter un règlement.

(2) Si l'agent de révision ne peut parvenir à amener les parties à accepter le règlement visé au paragraphe (1), il règle révision toutes les questions en souffrance au moyen d'un ordre.

Ordre de l'agent de

(3) Si l'agent de révision amène les parties à accepter un règlement aux termes du paragraphe (1) ou donne un ordre aux termes du paragraphe (2), l'employeur affiche sans délai sur les lieux de travail une copie du programme d'équité salariale qui reflète le règlement ou l'ordre.

Affichage du programme

(4) Des oppositions au programme d'équité salariale affiché Oppositions en vertu du paragraphe (3), peuvent être déposées auprès de

- 1. If the plan relates to a bargaining unit, objections may be filed only if the review officer has made an order under subsection (2) and only the employer or the bargaining agent for the bargaining unit may file objections.
- 2. If the plan does not relate to a bargaining unit and a review officer effected a settlement under subsection (1) with the agreement of the objector who filed the objection under subsection 14 (7), only an employee or group of employees to whom the plan applies, other than the objector, may file an objection.
- 3. If the plan does not relate to a bargaining unit and a review officer has made an order under subsection (2), the employer or any employee or group of employees to whom the plan applies may file an objection.

Deemed approval and first adjustments (5) If a review officer effects a settlement of a pay equity plan for a bargaining unit under subsection (1) or, if in any other case, no objection in respect of a pay equity plan is filed with the Commission in accordance with subsection (4), the plan shall be deemed to have been approved by the Commission and, on the day provided for in the plan, the employer shall make the first adjustments in compensation required to achieve pay equity.

Idem

(6) Where adjustments in compensation are made after the day provided for in the pay equity plan, the employer shall make the adjustments retroactive to that date.

Hearing before Commission **16.**—(1) If the Commission receives a notice of objection under subsection 15 (4), the Commission shall hold a hearing and, in its decision, shall settle the pay equity plan to which the objection relates.

Posting of plan

(2) Forthwith after receiving the Commission's decision, the employer shall post a copy of the decision in the work place and, on the day provided for in the plan, shall make the first adjustments in compensation required to achieve pay equity.

la Commission dans les trente jours de l'affichage, selon les modalités suivantes :

- 1. Si le programme est relié à une unité de négociation, des oppositions peuvent être déposées seulement si l'agent de révision a donné un ordre aux termes du paragraphe (2). Dans ce cas, seuls l'employeur ou l'agent négociateur de l'unité de négociation peuvent déposer une opposition.
- 2. Si le programme n'est pas relié à une unité de négociation et qu'un agent de révision a amené, aux termes du paragraphe (1), les parties à accepter un règlement avec le consentement de l'opposant qui a déposé l'opposition aux termes du paragraphe 14 (7), seuls un employé ou le groupe d'employés visés par le programme, autre que l'opposant, peuvent déposer une opposition.
- Si le programme n'est pas relié à une unité de négo-3. ciation et qu'un agent de révision a donné un ordre aux termes du paragraphe (2), l'employeur, un employé ou un groupe d'employés visés par le programme peuvent déposer une opposition.
- (5) Si un agent de révision amène les parties à accepter, aux Approbation termes du paragraphe (1), un règlement relatif à un programme d'équité salariale relié à une unité de négociation, ou rajustements que, dans tout autre cas, aucune opposition n'a été déposée auprès de la Commission au sujet d'un programme d'équité salariale aux termes du paragraphe (4), le programme est réputé avoir reçu l'approbation de la Commission. L'employeur, à la date prévue au programme, effectue les premiers rajustements de la rétribution nécessaires pour atteindre l'équité salariale.

réputée et

(6) Si des rajustements de la rétribution sont effectués après Idem la date prévue au programme d'équité salariale, l'employeur rend ces rajustements rétroactifs à cette date.

16 (1) Si la Commission reçoit un avis d'opposition en Audience vertu du paragraphe 15 (4), elle tient une audience et règle, Commission dans sa décision, le programme d'équité salariale qui fait l'objet de l'opposition.

(2) Lorsqu'il reçoit la décision de la Commission, l'em- Affichage du ployeur en affiche sans délai une copie sur les lieux de travail. À la date prévue au programme, il effectue les premiers rajustements de la rétribution nécessaires pour atteindre l'équité salariale.

programme

Idem

(3) Where adjustments in compensation are made after the day provided for in a pay equity plan, the employer shall make the adjustments retroactive to that date.

PART III

Implementation: Small Private Sector Employers

Application

17. This Part applies only to employers in the private sector who, on the effective date, employ more than nine and fewer than 100 employees.

Pay equity plans

18. An employer to whom this Part applies may establish pay equity plans for any of the employer's establishments.

Posting of

19.—(1) An employer who decides to establish a pay equity plan or plans for an establishment, as provided for in section 18, shall give notice of the decision to the bargaining agents, if any, for employees in the establishment and shall post a notice of the decision in the work place.

Application of Part II

(2) Upon the posting of the notice referred to in subsection (1), Part II applies to the establishment to which the notice relates and this Part ceases to apply to the employer with respect to that establishment.

Transition

- **20.**—(1) Notwithstanding subsection 6 (1) or (2), an employer to whom this Part applies may maintain compensation practices that were in existence in the employer's establishment immediately before the effective date,
 - (a) until the fifth anniversary of the effective date, if the employer employs at least fifty but fewer than 100 employees on the effective date; and
 - (b) until the sixth anniversary of the effective date, if the employer employs at least ten but fewer than fifty employees on the effective date,

and, until the relevant anniversary date, a compensation change that is the same in percentage terms for female job classes and male job classes in the establishment shall be deemed not to be a contravention of those subsections even though the change is different in dollar terms for a female job class than for a male job class.

(3) Si des rajustements de la rétribution sont effectués après Idem la date prévue au programme d'équité salariale, l'employeur rend ces rajustements rétroactifs à cette date.

PARTIE III

Mise en oeuvre : petits employeurs du secteur privé

17 La présente partie ne s'applique qu'aux employeurs du Champ secteur privé qui, à la date d'entrée en vigueur, ont à leur service plus de neuf, mais moins de 100 employés.

d'application

18 L'employeur auquel s'applique la présente partie peut établir des programmes d'équité salariale à l'égard de chacun salariale de ses établissements.

Programme

19 (1) L'employeur qui décide d'établir, aux termes de l'article 18, un ou plusieurs programmes d'équité salariale à l'égard de son établissement, avise de sa décision les agents négociateurs des employés de son établissement, le cas échéant, et affiche un avis de cette décision sur les lieux de travail

Affichage de

(2) Dès que l'employeur affiche l'avis prévu au paragraphe (1), la partie II s'applique à l'établissement visé par l'avis et la présente partie cesse alors de s'appliquer à l'employeur à l'égard de cet établissement.

Cas d'application de la partie II

20 (1) Malgré les paragraphes 6 (1) ou (2), l'employeur Disposition auquel s'applique la présente partie peut maintenir les pratiques de rétribution qui avaient cours dans son établissement immédiatement avant la date d'entrée en vigueur :

- jusqu'au cinquième anniversaire de la date d'entrée a) en vigueur, si l'employeur a au moins cinquante, mais moins de 100 employés à son service à la date d'entrée en vigueur;
- b) jusqu'au sixième anniversaire de la date d'entrée en vigueur, si l'employeur a au moins dix, mais moins de cinquante employés à son service à la date d'entrée en vigueur.

Jusqu'à l'anniversaire pertinent, la modification de la rétribution qui est la même, en termes de pourcentage, à l'égard des catégories d'emplois à prédominance féminine qu'à l'égard des catégories d'emplois à prédominance masculine dans l'établissement, est réputée ne pas contrevenir à ces paragraphes, même si, en termes absolus, la modification qui est faite à l'égard des catégories d'emplois à prédominance féminine difRepeal

(2) This Part is repealed on the sixth anniversary of the effective date.

PART IV

Enforcement

Complaints

21.—(1) Any employer or employee, or the bargaining agent, if any, representing the employee may file a complaint with the Commission complaining that there has been a contravention of this Act, the regulations or an order of the Commission.

Idem

- (2) Any employee or the bargaining agent, if any, representing the employee may file a complaint with the Commission complaining with respect to a pay equity plan that applies to the employee that,
 - (a) the plan is not being implemented according to its terms; or
 - (b) because of changed circumstances in the establishment, the plan is not appropriate for the female job class to which the employee belongs.

Combining of complaints

- (3) The Commission may combine two or more complaints and deal with them in one proceeding if the complaints,
 - (a) are made against the same person and bring into question the same or a similar issue; or
 - (b) have questions of law or fact in common.

Investigation of complaints

22.—(1) Subject to subsection (2), when the Commission receives a complaint, a review officer shall investigate the complaint and endeavour to effect a settlement.

Decision to not deal with complaint

- (2) A review officer may decide that a complaint should not be considered if the review officer is of the opinion that,
 - (a) the subject-matter of the complaint is trivial, frivolous, vexatious or made in bad faith; or

fère de celle qui est faite à l'égard des catégories d'emplois à prédominance masculine.

(2) La présente partie est abrogée le jour du sixième anni- Abrogation versaire de la date d'entrée en vigueur.

PARTIE IV

Exécution de la loi

- 21 (1) Un employeur, un employé ou, le cas échéant, un Plaintes agent négociateur qui représente l'employé, peuvent déposer auprès de la Commission une plainte signalant qu'il y a eu contravention à la présente loi, aux règlements ou à une ordonnance de la Commission.
- (2) L'employé ou, le cas échéant, l'agent négociateur qui le Idem représente, peuvent déposer auprès de la Commission, à l'égard du programme d'équité salariale qui vise cet employé, une plainte précisant, selon le cas :
 - que la mise en oeuvre du programme ne s'effectue pas conformément à ses modalités:
 - b) qu'en raison d'un changement de la situation au sein de l'établissement, le programme ne convient pas à la catégorie d'emplois à prédominance féminine à laquelle appartient l'employé.
- (3) La Commission peut réunir deux ou plusieurs plaintes et Réunion de en traiter au cours d'une même instance, si ces plaintes, selon le cas:

plaintes

- sont formulées contre la même personne et se rapa) portent au même point en litige ou à un point semblable:
- soulèvent les mêmes questions de droit ou de fait. b)
- 22 (1) Sous réserve du paragraphe (2), un agent de révi- Enquêtes au sion mène une enquête concernant la plainte reçue par la plaintes Commission et tente d'amener les parties à accepter un règlement.

(2) L'agent de révision peut décider de ne pas examiner la Décision de plainte s'il est d'avis que, selon le cas :

ne pas traiter de la plainte

la plainte est futile, frivole, vexatoire ou faite de mauvaise foi;

(b) the complaint is not within the jurisdiction of the Commission.

Hearing before Commission (3) The review officer shall notify the complainant of his or her decision under subsection (2) and the complainant may request a hearing before the Commission with respect to the decision.

Orders by review officers 23.—(1) Where a review officer is of the opinion that a pay equity plan is not being prepared as required by Part II, the review officer may order the employer and the bargaining agent, if any, to take such steps as are set out in the order to prepare the plan.

Idem

(2) Where a review officer is of the opinion that a pay equity plan is not being implemented according to its terms, the review officer may order the employer to take such steps as are set out in the order to implement the plan.

Idem

(3) Where a review officer is of the opinion that there has been a contravention of subsection 6 (1) or (2), the review officer may order the employer and the bargaining agent, if any, to take such steps as are set out in the order to comply with either or both of those subsections.

Idem

(4) An order under subsection (1) may provide for a mandatory posting date that is later than the one provided in section 9.

Reference to Commission (5) Where an employer or a bargaining agent fails to comply with an order under this section, a review officer may refer the matter to the Commission.

Hearing before Commission (6) An employer or bargaining agent named in an order under this section may request a hearing before the Commission with respect to the order.

Hearings

24.—(1) The Commission shall hold a hearing,

- (a) if a review officer is unable to effect a settlement of a complaint;
- (b) if a request for a hearing, as described in subsection 22 (3) or 23 (6), is received by the Commission; or
- (c) if a review officer refers a matter to the Commission under subsection 23 (5).

b) la plainte n'est pas du ressort de la Commission.

ÉOUITÉ SALARIALE

(3) L'agent de révision avise le plaignant de la décision qu'il Audience a prise aux termes du paragraphe (2), et le plaignant peut Commission demander à la Commission de tenir une audience à l'égard de la décision.

23 (1) L'agent de révision qui est d'avis qu'un programme Ordres des d'équité salariale n'est pas en cours d'élaboration tel que révision l'exige la partie II peut ordonner à l'employeur et à l'agent négociateur, le cas échéant, de prendre les mesures énoncées dans son ordre en vue d'élaborer le programme.

(2) L'agent de révision qui est d'avis qu'un programme Idem d'équité salariale n'est pas mis en oeuvre conformément à ses modalités peut ordonner à l'employeur de prendre les mesures énoncées dans son ordre aux fins de mettre en oeuvre le programme.

(3) L'agent de révision qui est d'avis qu'il y a eu contraven- Idem tion aux paragraphes 6 (1) ou (2) peut ordonner à l'employeur et à l'agent négociateur, le cas échéant, de prendre les mesures énoncées dans son ordre aux fins de se conformer à l'un ou l'autre de ces paragraphes ou aux deux.

(4) Un ordre donné aux termes du paragraphe (1) peut Idem prévoir une date d'affichage obligatoire postérieure à celle que prévoit l'article 9.

(5) Si l'employeur ou l'agent négociateur ne se conforment Renvoi pas à l'ordre donné aux termes du présent article, un agent de Commission

(6) Un employeur ou un agent négociateur nommés dans Audience l'ordre donné aux termes du présent article peuvent demander Commission à la Commission de tenir une audience à cet égard.

révision peut renvoyer la question à la Commission.

- 24 (1) La Commission tient une audience dans les cas Audiences suivants:
 - si l'agent de révision ne peut amener les parties à a) accepter un règlement relativement à la plainte;
 - si la Commission reçoit une demande d'audience b) prévue aux paragraphes 22 (3) ou 23 (6);
 - c) si l'agent de révision renvoie une question devant la Commission aux termes du paragraphe 23 (5).

Commission orders

- (2) The Commission shall decide the issue that is before it for a hearing and, without restricting the generality of the foregoing, the Commission,
 - (a) where it finds that an employer or a bargaining agent has failed to comply with Part II, may order that a review officer prepare a pay equity plan for the employer's establishment and that the employer and the bargaining agent, if any, or either of them, pay all of the costs of preparing the plan;
 - (b) may confirm, vary or revoke orders of review officers;
 - (c) may, for the female job class that is the subject of the complaint or reference, order adjustments in compensation in order to achieve pay equity, where the Commission finds that there has been a contravention of subsection 6 (1);
 - (d) may order that the pay equity plan be revised in such manner as the Commission considers appropriate, where it finds that the plan is not appropriate for the female job class that is the subject of the complaint or reference because there has been a change of circumstances in the establishment; and
 - (e) may order a party to a proceeding to take such action or refrain from such action as in the opinion of the Commission is required in the circumstances.

Idem

(3) An order under clause (2) (a) may provide that a review officer may retain the services of such experts as the review officer considers necessary to prepare a pay equity plan.

Application of Part II

- (4) Part II, except section 15, applies with necessary modifications to a pay equity plan prepared under clause (2) (a) but.
 - (a) the order of the Commission may provide for a mandatory posting date that is later than the one provided in section 9;

(2) La Commission règle la question dont elle est saisie, et Ordonnances de la peut notamment : Commission

- a) enjoindre à l'agent de révision d'élaborer un programme d'équité salariale destiné à l'établissement de l'employeur, lorsqu'elle constate que ce dernier ou l'agent négociateur ne se sont pas conformés à la partie II. Elle peut aussi enjoindre à l'employeur et à l'agent négociateur, le cas échéant, ou à l'un d'eux, d'acquitter la totalité des frais d'élaboration du programme:
- confirmer, modifier ou révoquer les ordres des b) agents de révision;
- c) ordonner, à l'égard de la catégorie d'emplois à prédominance féminine qui fait l'objet de la plainte ou du renvoi, que des rajustements de la rétribution soient effectués pour atteindre l'équité salariale. lorsqu'elle constate qu'il y a eu contravention au paragraphe 6 (1);
- ordonner que le programme d'équité salariale soit d) révisé de la manière que la Commission estime appropriée lorsqu'elle constate que le programme ne convient pas à la catégorie d'emplois à prédominance féminine qui fait l'objet de la plainte ou du renvoi en raison d'un changement de la situation au sein de l'établissement:
- enjoindre à une partie à l'instance soit de prendre certaines mesures, soit de s'en abstenir, selon ce que la Commission juge nécessaire dans les circonstances.
- (3) L'ordonnance prise en vertu de l'alinéa (2) a) peut per- Idem mettre à l'agent de révision de retenir les services des experts que celui-ci estime nécessaires en vue d'élaborer un programme d'équité salariale.

(4) À l'exception de l'article 15, la partie II s'applique avec Cas d'applicales adaptations nécessaires au programme d'équité salariale partie II élaboré en vertu de l'alinéa (2) a). Toutefois :

l'ordonnance prise par la Commission peut prévoir a) une date d'affichage obligatoire postérieure à celle que prévoit l'article 9;

- (b) the order of the Commission shall not provide for a compensation adjustment date that is different than the relevant date set out in clause 12 (2) (e);
- (c) the review officer shall perform the duties of the employer and the bargaining agent, if any;
- (d) when the review officer posts the plan in the work place as subsection 13 (4) or 14 (6) provides, the employer, the bargaining agent (if the plan relates to a bargaining unit), or any employee or group of employees to whom the plan applies (if the plan does not relate to a bargaining unit) may file an objection with the Commission; and
- (e) an objection under clause (d) shall be dealt with by the Commission under section 16.

Retroactive compensation adjustments

(5) An order under clause (2) (c) may be retroactive to the day of the contravention of subsection 6 (1).

Idem

(6) An order under clause (2) (d) may provide that adjustments in compensation resulting from the revision of the pay equity plan be made retroactive to the day of the change in circumstances that gave rise to the order.

Offences and penalties

25.—(1) Every person who contravenes or fails to comply with this Act or an order of the Commission is guilty of an offence and on conviction is liable to a fine of not more than \$2,000, in the case of an individual, and not more than \$25,000, in any other case.

Parties

(2) If a corporation or bargaining agent contravenes this Act or an order of the Commission, every officer, official or agent thereof who authorizes, permits or acquiesces in the contravention is a party to and guilty of the offence and, on conviction, is liable to the penalty provided for the offence whether or not the corporation or bargaining agent has been prosecuted or convicted.

Prosecution against bargaining agent

(3) A prosecution for an offence under this Act may be instituted against a bargaining agent in its own name.

- l'ordonnance de la Commission ne prévoit pas une b) date de rajustement de la rétribution différente de la date pertinente énoncée à l'alinéa 12 (2) e);
- l'agent de révision exerce les fonctions de l'emc) ployeur et de l'agent négociateur, le cas échéant;
- d) lorsque l'agent de révision affiche le programme sur les lieux de travail comme le prévoient les paragraphes 13 (4) ou 14 (6), l'employeur, l'agent négociateur (si le programme est relié à une unité de négociation) ou un employé ou un groupe d'employés visés par le programme (si le programme n'est pas relié à une unité de négociation) peuvent déposer une opposition auprès de la Commission;
- la Commission traite de l'opposition visée à l'alinéa e) d) aux termes de l'article 16.
- (5) L'ordonnance prise aux termes de l'alinéa (2) c) peut Rajustements avoir un effet rétroactif au jour de la contravention au paragraphe 6 (1).

rétroactifs de

(6) L'ordonnance prise aux termes de l'alinéa (2) d) peut prévoir que les rajustements de la rétribution résultant de la révision du programme d'équité salariale ont un effet rétroactif au jour où s'est produit le changement de situation qui a donné lieu à l'ordonnance.

25 (1) Quiconque contrevient aux dispositions de la pré-Infractions et sente loi ou d'une ordonnance de la Commission ou ne s'y conforme pas, est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au plus 2 000 \$ dans le cas d'une personne physique, et d'au plus 25 000 \$ dans les autres cas.

(2) Si une personne morale ou un agent négociateur contre- Parties viennent à une disposition de la présente loi ou d'une ordonnance de la Commission, le dirigeant, l'employé ou le mandataire qui autorise ou permet la contravention ou y donne son consentement est partie à l'infraction, en est coupable et, sur déclaration de culpabilité, est passible de la peine prévue pour cette infraction, que la personne morale ou l'agent négociateur aient été ou non poursuivis ou déclarés coupables de l'infraction.

(3) Une poursuite relative à une infraction à la présente loi Poursuite peut être intentée contre l'agent négociateur en tant que tel.

contre l'agent négociateur

Consent

(4) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Commission.

PART V

Administration

Commission established

26. There is hereby established a commission to be known as the Pay Equity Commission of Ontario.

Composition and appointment

27.—(1) The Commission shall be composed of a presiding officer, one or more deputy presiding officers and as many other members equal in number representative of employers and employees respectively as the Lieutenant Governor in Council considers proper, all of whom shall be appointed by the Lieutenant Governor in Council.

Alternate presiding officer

(2) The Lieutenant Governor in Council shall designate one of the deputy presiding officers to be alternate presiding officer and the person so designated, in the absence of the presiding officer or if the presiding officer is unable to act, shall have all of the powers of the presiding officer.

Remuneration and expenses

(3) The members of the Commission who are not Crown employees shall be paid such remuneration as may be fixed by the Lieutenant Governor in Council and, subject to the approval of Management Board of Cabinet, the reasonable expenses incurred by them in the course of their duties under this Act.

Resignation of member

(4) Where a member of the Commission resigns, he or she may carry out and complete any duties or responsibilities and exercise any powers that he or she would have had if he or she had not ceased to be a member, in connection with any matter in respect of which there was any proceeding in which he or she participated as a member of the Commission.

Services of ministries, boards, etc.

(5) In exercising its powers under this Act, the Commission shall, if appropriate, make use of the services and facilities of a ministry, board, commission or agency of the Government of Ontario.

Staff and other assistance R.S.O. 1980, c. 418 (6) Such persons as are necessary for the proper conduct of the Commission's work may be appointed as employees of the Commission under the *Public Service Act* and the Commission, subject to the approval of Management Board of Cabinet, may engage, under contract, the persons, including professionals and experts, that it considers necessary to exercise its powers and to carry out its duties.

(4) Il ne peut être intenté aucune poursuite relative à une Consentement infraction à la présente loi sans le consentement écrit de la Commission.

PARTIE V

Application de la loi

26 Est créée une commission nommée Commission de Création de l'équité salariale de l'Ontario.

la Commission

27 (1) La Commission se compose d'un président, d'un ou Constitution de plusieurs vice-présidents, et du nombre d'autres membres répartis en un nombre égal de représentants des employeurs et des employés que le lieutenant-gouverneur en conseil juge approprié. Toutes ces personnes sont nommées par le lieutenant-gouverneur en conseil.

et nomination

(2) Le lieutenant-gouverneur en conseil désigne l'un des vice-présidents comme président suppléant. Cette personne possède tous les pouvoirs du président si ce dernier est absent ou empêché d'agir.

suppléant

(3) Les membres de la Commission qui ne sont pas des employés de la Couronne reçoivent la rémunération que peut fixer le lieutenant-gouverneur en conseil, et, sous réserve de l'approbation du Conseil de gestion du gouvernement, les frais normaux engagés lors de l'exercice de leurs fonctions aux termes de la présente loi.

Rémunération et frais

(4) Le membre de la Commission qui démissionne peut tou- Démission tefois exercer les attributions qu'il aurait continué d'avoir s'il n'avait pas démissionné, en ce qui concerne toute question faisant l'objet d'une instance à laquelle il a participé en tant que membre.

d'un membre

(5) Dans l'exercice de ses pouvoirs aux termes de la pré-Services des sente loi, la Commission se prévaut, si cela est approprié, des organismes, services et installations des ministères, organismes, commis- etc. sions ou agences du gouvernement de l'Ontario.

(6) Les personnes nécessaires à la conduite efficace des acti- Personnel et vités de la Commission peuvent être engagées comme autres services employés de la Commission aux termes de la Loi sur la fonc- L.R.O. 1980, tion publique. La Commission peut, sous réserve de l'appro- chap. 418 bation du Conseil de gestion du gouvernement, recruter par contrat les personnes qu'elle juge nécessaires à l'exercice de ses attributions, notamment des professionnels et des experts.

Powers and duties of Commission

28.—(1) The Commission may exercise such powers and shall perform such duties as are conferred or imposed upon it by this Act or the regulations.

Idem

- (2) Without limiting the generality of subsection (1), the Commission,
 - (a) shall designate one or more of its employees as review officers for the purposes of this Act;
 - (b) may decide in an order made under subsection 16 (1) or clause 24 (2) (a) that any job class is a female job class or a male job class;
 - (c) may make rules for the conduct and management of its affairs and for the practice and procedure to be observed in matters before it;
 - (d) may require that any person seeking a determination of any matter by the Commission shall give written notice, in such form and manner as the Commission specifies, to the persons that the Commission specifies; and
 - (e) may conduct research and produce papers related to pay equity and related subjects and conduct public education programs related to pay equity and related subjects.

Panels

(3) The presiding officer may establish panels of the Commission and it may sit in two or more panels simultaneously so long as a quorum of the Commission is present on each panel.

Quorum

(4) The presiding officer or a deputy presiding officer, one member representative of employers and one member representative of employees constitute a quorum and are sufficient for the exercise of all the jurisdiction and powers of the Commission.

Decisions

(5) The decision of the majority of the members of the Commission present and constituting a quorum is the decision of the Commission, but, if there is no majority, the decision of the presiding officer or deputy presiding officer governs.

Exclusive jurisdiction of Commission

29.—(1) The Commission has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it and the action or decision of the Commission thereon is final and conclusive for all purposes.

- 28 (1) La Commission peut exercer les pouvoirs et doit Attributions accomplir les obligations qui lui sont conférés par la présente Commission loi ou par les règlements.
- (2) La Commission possède notamment les attributions Idem suivantes:
 - a) elle désigne un ou plusieurs de ses employés comme agent de révision pour l'application de la présente loi:
 - b) elle peut décider, au moyen d'une ordonnance prise aux termes du paragraphe 16 (1) ou de l'alinéa 24 (2) a), qu'une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine;
 - c) elle peut établir des règles concernant la conduite et la gestion de ses affaires, ainsi que des règles de pratique et de procédure à suivre relativement aux questions dont elle est saisie;
 - elle peut exiger que la personne qui lui demande de d) prendre une décision relative à une question quelconque en avise par écrit, de la manière que précise la Commission, les personnes qu'elle précise;
 - e) elle peut effectuer des recherches et préparer des rapports concernant l'équité salariale et des questions connexes. Elle peut instituer à l'intention du public des programmes d'information concernant ces sujets.
- (3) Le président peut former des comités de la Commission, Comités qui peut ainsi siéger simultanément en plusieurs comités, pourvu que le quorum de la Commission soit atteint dans chacun d'eux.

(4) Le président ou un vice-président, un membre représen- Quorum tant les employeurs et un membre représentant les employés constituent le quorum et peuvent exercer tous les pouvoirs de la Commission.

(5) La décision de la majorité des membres de la Commis- Décisions sion présents qui constituent le quorum est la décision de la Commission. En cas de partage, le président ou le vice-président a voix prépondérante.

29 (1) La Commission a compétence exclusive pour exer- Compétence cer les pouvoirs que lui confère la présente loi et trancher les la Commis-

Reconsideration of decisions, etc.

(2) The Commission may at any time, if it considers it advisable to do so, reconsider a decision or order made by it and vary or revoke the decision or order.

Testimony in civil proceedings

30. Except with the consent of the Commission, no member of the Commission, nor any of its employees nor any other person whose services have been contracted for by the Commission, shall be required to give testimony in any civil proceeding or in any proceeding before the Commission or any other tribunal respecting information obtained in the discharge of their duties or while acting within the scope of their employment under this Act.

Annual report

31. The Commission shall make an annual report of its activities and affairs to the Minister not later than the 30th day of June in each year and the Minister shall table the report before the Assembly if it is in session or, if not, at the next session.

Parties to proceedings

- **32.**—(1) Where a hearing is held before the Commission or where a review officer investigates for the purposes of effecting a settlement of an objection or complaint, the parties to the proceeding are,
 - (a) the employer;
 - (b) the objector or complainant; and
 - (c) the bargaining agent (if the pay equity plan relates to a bargaining unit) or the employees to whom the plan relates (if the plan does not relate to a bargaining unit).

Notice

(2) Where the Commission or a review officer requires that a notice be given by the employer to employees, the employer shall post the notice in the work place and such notice shall be deemed to have been sufficiently given to all employees in the work place when it is so posted.

Represent-

(3) An employee or a group of employees may appoint any person or organization to act as the agent of the employee or group of employees before the Commission or before a review officer.

Idem

(4) Where an employee or group of employees advises the Commission in writing that the employee or group of employees wishes to remain anonymous, the agent of the employee or group of employees shall be the party to the proceeding before the Commission or review officer and not the employee or group of employees.

questions de fait ou de droit soulevées à l'occasion d'une question dont elle est saisie. Ses décisions et les mesures qu'elle prend sont définitives et ont à toutes fins force de chose jugée.

(2) La Commission peut, chaque fois qu'elle le juge à pro- Nouvel pos, examiner de nouveau, modifier ou annuler ses propres décisions et ordonnances.

décisions et ordonnances

30 Sauf si la Commission y consent, ses membres, ses Témoignages employés et les personnes dont elle a retenu les services par ces civiles contrat ne peuvent pas être contraints à témoigner lors d'une instance civile ou devant la Commission ou toute autre commission, en ce qui concerne les renseignements obtenus dans l'accomplissement de leurs devoirs ou dans le cadre de leurs fonctions aux termes de la présente loi.

31 La Commission présente au ministre, au plus tard le 30 Rapport juin de chaque année, un rapport annuel sur ses activités et ses affaires. Le ministre le dépose devant l'Assemblée si elle siège, sinon il le fait à la session suivante.

32 (1) Lorsque la Commission tient une audience ou qu'un agent de révision mène une enquête en vue d'amener les parties à accepter un règlement relativement à une opposition ou à une plainte, les parties à l'instance sont les suivantes ·

- l'employeur; a)
- b) l'opposant ou le plaignant;
- c) l'agent négociateur (si le programme d'équité salariale est relié à une unité de négociation) ou les employés visés par le programme (si celui-ci n'est pas relié à une unité de négociation).
- (2) Lorsque la Commission ou l'agent de révision exige que Avis l'employeur donne un avis à ses employés, celui-ci affiche l'avis sur les lieux de travail, et l'avis ainsi affiché est réputé suffisant à l'égard de tous les employés du lieu de travail.
- (3) Un employé ou un groupe d'employés peuvent désigner Représentaune personne ou une organisation comme leur mandataire devant la Commission ou l'agent de révision.

(4) Lorsqu'un employé ou un groupe d'employés avisent Idem par écrit la Commission de leur désir de garder l'anonymat, leur mandataire devient à leur place la partie à l'instance devant la Commission ou l'agent de révision.

Idem

(5) Where subsection (4) applies, the agent, in the agent's name, may take all actions that an employee may take under this Act including the filing of objections under Part II and the filing of complaints under Part IV.

Review officers, duties

33.—(1) Review officers shall monitor the preparation and implementation of pay equity plans, investigate objections and complaints filed with the Commission and shall attempt to effect settlements or take such other action as is set out in this Act or in an order of the Commission.

Powers

- (2) A review officer, for the purpose of carrying out his or her duties,
 - (a) may enter any place at any reasonable time;
 - (b) may request the production for inspection of documents or things that may be relevant to the carrying out of the duties;
 - (c) upon giving a receipt therefor, may remove from a place documents or things produced pursuant to a request under clause (b) for the purpose of making copies or extracts and shall promptly return them to the person who produced them;
 - (d) may question a person on matters that are or may be relevant to the carrying out of the duties subject to the person's right to have counsel or some other representative present during the examination; and
 - (e) may provide in an order made under subsection 15 (2) or 23 (1) that any job class is a female job class or a male job class.

Non-application of R.S.O. 1980, c. 484

(3) The *Statutory Powers Procedure Act* does not apply to a review officer and he or she is not required to hold a hearing before making an order authorized by this Act.

Entry to dwellings

34.—(1) A person shall not exercise a power of entry conferred by this Act to enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under this section.

(5) Lorsque le paragraphe (4) s'applique, le mandataire Idem peut, en son nom, prendre toutes les mesures qu'un employé peut prendre aux termes de la présente loi. Il peut notamment déposer une opposition en vertu de la partie II et déposer une plainte en vertu de la partie IV.

33 (1) Il incombe aux agents de révision de contrôler l'éla-Fonctions de boration et la mise en oeuvre des programmes d'équité salariale et de mener des enquêtes au sujet des oppositions et des plaintes qui ont été déposées auprès de la Commission. Il leur incombe également de tenter d'amener les parties à accepter un règlement ou de prendre toute autre mesure prévue par la présente loi ou par une ordonnance de la Commission.

- (2) Dans l'exercice de ses fonctions, l'agent de révision Pouvoirs peut:
 - à une heure raisonnable, pénétrer dans un endroit a) quelconque;
 - exiger la production, à des fins d'inspection, de b) documents ou d'objets qui peuvent être reliés à l'exercice de ses fonctions:
 - c) après avoir donné un récépissé à cet effet, enlever de quelque endroit où ils se trouvent, les documents ou les objets produits à la suite de la demande formulée en vertu de l'alinéa b), aux fins d'en tirer des copies ou des extraits, après quoi ils sont promptement retournés à la personne qui les a produits;
 - interroger quiconque sur des questions qui sont ou d) peuvent être reliées à l'exercice de ses fonctions, sous réserve du droit de cette personne à la présence d'un avocat ou d'un autre représentant lors de l'interrogatoire;
 - e) stipuler, dans un ordre donné aux termes des paragraphes 15 (2) ou 23 (1), qu'une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine.
- (3) La Loi sur l'exercice des compétences légales ne s'appli- Non-applicaque pas à un agent de révision, et celui-ci n'est pas obligé de 484 des tenir une audience avant de donner un ordre autorisé par la L.R.O. de présente loi.

tion du chap.

34 (1) Le pouvoir accordé par la présente loi de pénétrer Accès à un dans un endroit qui sert de logement, ne peut être exercé sans

Warrant for search

(2) Where a justice of the peace is satisfied on evidence upon oath that there are in a place documents or things that there is reasonable ground to believe will afford evidence relevant to the carrying out of a review officer's duties under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing the review officer named in the warrant to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed.

Warrant for entry

(3) Where a justice of the peace is satisfied on evidence upon oath that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that a review officer may carry out his or her duties under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing such entry by the review officer named in the warrant.

Execution and expiry of warrant

- (4) A warrant issued under this section,
 - (a) shall specify the hours and days during which it may be executed; and
 - (b) shall name a date on which it expires, which date shall not be later than fifteen days after its issue.

Obstruction

(5) No person shall hinder, obstruct or interfere with a review officer in the execution of a warrant or otherwise impede a review officer in carrying out his or her duties under this Act.

Idem

(6) Subsection (5) is not contravened where a person refuses to produce documents or things, unless a warrant has been issued under subsection (2).

Admissibility of copies

(7) Copies of, or extracts from, documents and things removed from premises under this Act and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

la permission de l'occupant, sauf en vertu d'un mandat délivré aux termes du présent article.

(2) Le juge de paix qui est convaincu, sur la foi de témoi- Mandat de gnages recueillis sous serment, qu'il se trouve dans un endroit quelconque des documents ou des objets qu'on peut raisonnablement croire susceptibles de fournir des preuves à l'agent de révision dans l'exercice de ses fonctions aux termes de la présente loi, peut délivrer un mandat de perquisition rédigé selon la formule prescrite. Le mandat autorise l'agent de révision qui v est nommé à perquisitionner à cet endroit en vue d'en enlever les pièces précitées pour en tirer des copies ou des extraits, après quoi elles sont promptement retournées à cet endroit.

perquisition

(3) Le juge de paix qui est convaincu, sur la foi de témoi- Mandat pour gnages recueillis sous serment, qu'il existe des motifs raison- un endroit nables de croire qu'il est nécessaire qu'un agent de révision, dans l'exercice de ses fonctions en vertu de la présente loi, pénètre dans un endroit qui sert de logement ou dont l'accès a été refusé, peut délivrer un mandat rédigé selon la formule prescrite, autorisant l'agent de révision qui v est nommé à pénétrer dans le logement.

pénétrer dans

(4) Le mandat délivré aux termes du présent article :

Exécution et caducité du mandat

- a) précise les jours et les heures pendant lesquels il peut être exécuté;
- b) porte une date de caducité qui ne peut être postérieure à quinze jours de sa délivrance.
- (5) Nul ne doit entraver ni gêner un agent de révision dans Interdiction l'exécution d'un mandat ni d'une autre façon l'empêcher d'exercer ses fonctions aux termes de la présente loi.

(6) Sauf si un mandat a été délivré aux termes du paragra- Idem phe (2), le paragraphe (5) n'est pas enfreint par le refus d'une personne de produire des documents ou des objets.

(7) Les copies ou extraits qu'une personne a tirés des docu- Admissibilité ments et des objets qui ont été enlevés d'un endroit aux termes de la présente loi et que cette personne certifie être conformes aux originaux, sont admissibles en preuve dans la même mesure et ont la même valeur probante que les documents ou les objets dont ils sont tirés.

des copies

PART VI

Regulations and Miscellaneous

Regulations

35. The Lieutenant Governor in Council may make regulations,

- (a) prescribing forms and notices and providing for their use;
- (b) prescribing methods for determining the historical incumbency of a job class;
- (c) prescribing criteria that shall be taken into account in deciding whether a job class is a female job class or a male job class;
- (d) prescribing the method of valuing any form of compensation;
- (e) prescribing criteria that shall be taken into account in determining whether work performed in two job classes is of equal or comparable value;
- (f) prescribing criteria that shall be taken into account in deciding whether or not a difference in compensation between a female job class and a male job class is a difference that is permitted by subsection 7 (1) or (2);
- (g) permitting the Commission, on the application of an employer and in accordance with such criteria as may be prescribed in the regulations, to change the mandatory posting date and the dates for adjustments in compensation to dates later than those set out in Part II and to vary the minimum adjustments in compensation required by that Part, subject to such conditions as the Commission may impose in its order granting the application;
- (h) adding to the Appendix to the Schedule any person or class of persons or any agency, authority, board, commission, corporation or organization of any kind and providing that the mandatory posting date for an entity so added shall be such date as is set out in the regulations.

PARTIE VI

Règlements et dispositions diverses

- **35** Le lieutenant-gouverneur en conseil peut, par règle- Règlements ment :
 - a) prescrire des formules et des avis, et prévoir les modalités de leur emploi;
 - b) prescrire les méthodes à utiliser pour déterminer le sexe des personnes qui occupent traditionnellement les postes d'une catégorie d'emplois;
 - c) prescrire des critères dont il est tenu compte aux fins de déterminer si une catégorie d'emplois est une catégorie d'emplois à prédominance féminine ou une catégorie d'emplois à prédominance masculine;
 - d) prescrire la méthode à utiliser pour déterminer la valeur de toute forme de rétribution;
 - e) prescrire des critères dont il est tenu compte aux fins de déterminer si le travail effectué dans deux catégories d'emplois est de valeur égale ou comparable;
 - f) prescrire des critères dont il est tenu compte aux fins de déterminer si un écart de rétribution entre une catégorie d'emplois à prédominance féminine et une catégorie d'emplois à prédominance masculine est un écart permis par les paragraphes 7 (1) ou (2);
 - g) permettre à la Commission, à la demande d'un employeur et conformément aux critères qui peuvent être prescrits dans les règlements, de reporter la date d'affichage obligatoire et les dates des rajustements de la rétribution à des dates postérieures à celles que prévoit la partie II, ainsi que de modifier les rajustements minimaux de la rétribution exigés par cette partie, aux conditions que la Commission peut imposer dans l'ordonnance par laquelle elle consent à la demande;
 - h) ajouter à l'appendice de l'annexe une personne, une catégorie de personnes ou un organisme, un office, un conseil, une commission, une personne morale ou une organisation quelconque, et prévoir que la

Review of Act **36.**—(1) Seven years after the effective date, the Lieutenant Governor in Council shall appoint a person who shall undertake a comprehensive review of this Act and its operation.

1986

Report to Minister (2) The person appointed under subsection (1) shall prepare a report on his or her findings and shall submit the report to the Minister.

Idem

(3) The Minister shall table the report before the Assembly if it is in session or, if not, at the next session.

Moneys

37. The moneys required for the purposes of this Act by the Crown in right of Ontario shall, until the 31st day of March, 1987, be paid out of the Consolidated Revenue Fund and thereafter shall be paid out of the moneys appropriated therefor by the Legislature.

Crown bound

38. This Act binds the Crown in right of Ontario.

Commence-

39. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

40. The short title of this Act is the *Pay Equity Act*, 1986.

date d'affichage obligatoire de ces derniers est celle qui figure aux règlements.

36 (1) Sept ans après la date d'entrée en vigueur, le Examen de la lieutenant-gouverneur en conseil nomme une personne qui procède à l'examen global de la loi et des modalités de son application.

(2) La personne nommée aux termes du paragraphe (1) rédige un rapport qui énonce ses conclusions et le présente au ministre.

Rapport au ministre

- (3) Le ministre dépose le rapport devant l'Assemblée si elle Idem siège, sinon il le fait à la session suivante.
- 37 Les sommes d'argent nécessaires à la Couronne du chef Sommes de l'Ontario pour l'application de la présente loi sont prélevées, jusqu'au 31 mars 1987, sur le Fonds du revenu consolidé. Après cette date, ces sommes sont prélevées sur les sommes affectées à cette fin par la Législature.

d'argent

38 La présente loi lie la Couronne du chef de l'Ontario.

La Couronne

- 39 La présente loi entre en vigueur le jour que le lieute- Entrée en nant-gouverneur fixe par proclamation.
- 40 Le titre abrégé de la présente loi est Loi de 1986 sur Titre abrégé l'équité salariale.

SCHEDULE

- 1. The public sector in Ontario consists of,
- (a) the Crown in right of Ontario, every agency thereof, and every authority, board, commission, corporation, office or organization of persons a majority of whose directors, members or officers are appointed or chosen by or under the authority of the Lieutenant Governor in Council or a member of the Executive Council;

R.S.O. 1980, c. 303 (b) the corporation of every municipality in Ontario, every local board as defined by the *Municipal Affairs Act*, and every authority, board, commission, corporation, office or organization of persons whose members or officers are appointed or chosen by or under the authority of the council of the corporation of a municipality in Ontario;

R.S.O. 1980, c. 129 (c) every board as defined in the Education Act, and every college, university or post-secondary school educational institution in Ontario the majority of the capital or annual operating funds of which are received from the Crown;

R.S.O. 1980, cc. 410, 389, 79, 391

- (d) every hospital listed in the Schedule to Regulation 863 of Revised Regulations of Ontario, 1980 made under the *Public Hospitals Act*, every private hospital operated under the authority of a licence issued under the *Private Hospitals Act*, every hospital established or approved by the Lieutenant Governor in Council as a community psychiatric hospital under the *Community Psychiatric Hospitals Act* and every sanitarium licensed by the Lieutenant Governor in Council under the *Private Sanitaria Act*;
- (e) every corporation with share capital, at least 90 per cent of the issued shares of which are beneficially held by or for an employer or employers described in clauses (a) to (d), and every wholly-owned subsidiary thereof;
- (f) every corporation without share capital, the majority of whose members or officers are members of, or are appointed or chosen by or under the authority of, an employer or employers described in clauses (a) to (d), and every wholly-owned subsidiary thereof;

1983, c. 10

- (g) every board of health under the *Health Promotion and Protection Act*, 1983, and every board of health under an Act of the Legislature that establishes or continues a regional municipality;
- (h) the Office of the Lieutenant Governor of Ontario, the Office of the Assembly, members of the Assembly, the Office of the Ombudsman and the Provincial Auditor; and
- (i) any authority, board, commission, corporation, office, person or organization of persons, or any class of authorities, boards, commissions, corporations, offices, persons or organizations of persons, set out in the Appendix to this Schedule or added to the Appendix by the regulations made under this Act.

ANNEXE

- 1 Le secteur public en Ontario se compose des éléments suivants :
- a) la Couronne du chef de l'Ontario, les organismes qui en relèvent, ainsi que les offices, conseils, commissions, personnes morales, les bureaux et organisations de personnes dont la majorité des administrateurs, des membres ou des dirigeants sont nommés ou choisis par le lieutenant-gouverneur en conseil ou par un membre du Conseil des ministres ou avec leur approbation;
- b) les municipalités de l'Ontario, les conseils locaux au sens de la Loi sur les affaires municipales, ainsi que les offices, conseils, commis- L.R.O. 1980, sions, personnes morales, les bureaux et organisations de personnes chap. 303 dont les membres ou les dirigeants sont nommés ou choisis par le conseil d'une municipalité de l'Ontario ou avec leur approbation;

c) les conseils au sens de la Loi sur l'éducation, ainsi que les collèges, L.R.O. 1980, les universités et les établissements d'enseignement postsecondaire de chap. 129 l'Ontario qui reçoivent la majeure partie de leur capital ou de leurs fonds annuels de fonctionnement de la Couronne:

d) les hôpitaux dont le nom figure à l'annexe du Règlement 863 des Règlements refondus de l'Ontario de 1980 pris en application de la Loi sur les hôpitaux publics, les hôpitaux privés exploités aux termes L.R.O. 1980, d'un permis délivré en vertu de la Loi sur les hôpitaux privés, les chap. 410, hôpitaux établis ou agréée par le lieutenant gouverneur en conseil à 389, 79, 391 hôpitaux établis ou agréés par le lieutenant-gouverneur en conseil à titre d'hôpitaux psychiatriques communautaires en vertu de la Loi sur les hôpitaux psychiatriques communautaires, ainsi que les maisons de santé titulaires d'un permis délivré par le lieutenant-gouverneur en conseil en vertu de la Loi sur les maisons de santé;

- e) les personnes morales disposant d'un capital-actions dont au moins 90 pour cent des actions émises sont détenues à titre bénéficiaire par un ou plusieurs employeurs visés aux alinéas a) à d) ou pour le compte de ceux-ci, ainsi que les filiales en propriété exclusive de ces personnes morales;
- f) les personnes morales sans capital-actions dont la majorité des membres ou des dirigeants sont nommés ou choisis par un ou plusieurs des employeurs visés aux alinéas a) à d) ou avec leur approbation, ou en sont membres, ainsi que les filiales en propriété exclusive de ces personnes morales:
- g) les conseils de santé aux termes de la Loi de 1983 sur la protection et 1983, la promotion de la santé, ainsi que les conseils de santé aux termes chap. 10 d'une loi de la Législature qui crée ou maintient une municipalité régionale;
- h) le Bureau du lieutenant-gouverneur de l'Ontario et celui de l'Assemblée, les membres de l'Assemblée, le Bureau de l'ombudsman et celui du vérificateur provincial;
- i) les offices, conseils, commissions, personnes morales, bureaux, personnes ou organisations de personnes et les catégories de ceux-ci qui figurent dans l'appendice à la présente annexe ou qui sont ajoutés à l'appendice au moyen de règlements pris en application de la présente loi.

APPENDIX

MINISTRY OF AGRICULTURE AND FOOD

1. Ontario Dairy Herd Improvement Corporation.

MINISTRY OF CITIZENSHIP AND CULTURE

- 1. The Art Gallery of Ontario.
- 2. CJRT-FM Inc.
- 3. Royal Botanical Gardens.

MINISTRY OF COLLEGES AND UNIVERSITIES

- 1. Collège dominicain de philosophie et de théologie.
- 2. Knox College.
- 3. McMaster Divinity College.
- 4. Queen's Theological College.
- 5. Regis College.
- 6. St. Augustine's Seminary.
- 7. St. Michael's College.
- 8. St. Paul University.
- 9. St. Paul's United College.
- 10. St. Peter's Seminary.
- 11. Trinity College.
- 12. Victoria College.
- 13. Waterloo Lutheran Seminary.
- 14. Wycliffe College.

MINISTRY OF COMMUNITY AND SOCIAL SERVICES

- 1. Any authority, board, commission, corporation, office, person or organization of persons which operates or provides,
 - (a) children's residences operating under the *Child and Family Services Act, 1984* (c. 55);
 - (b) homes for the aged and rest homes operating under the *Homes for* the Aged and Rest Homes Act (R.S.O. 1980, c. 203);
 - (c) counselling services, special assistance and staff training services purchased by municipalities under the General Welfare Assistance Act (R.S.O. 1980, c. 188);

APPENDICE

MINISTÈRE DE L'AGRICULTURE ET DE L'ALIMENTATION

1. Ontario Dairy Herd Improvement Corporation.

MINISTÈRE DES AFFAIRES CIVIQUES ET CULTURELLES

- 1. Musée des beaux-arts de l'Ontario.
- 2. CJRT-FM Inc.
- 3. Royal Botanical Gardens.

MINISTÈRE DES COLLÈGES ET UNIVERSITÉS

- 1. Collège dominicain de philosophie et de théologie.
- 2. Knox College.
- 3. McMaster Divinity College.
- 4. Queen's Theological College.
- 5. Regis College.
- 6. St. Augustine's Seminary.
- 7. St. Michael's College.
- 8. Université Saint-Paul.
- 9. St. Paul's United College.
- 10. St. Peter's Seminary.
- 11. Trinity College.
- 12. Victoria College.
- 13. Waterloo Lutheran Seminary.
- 14. Wycliffe College.

MINISTÈRE DES SERVICES SOCIAUX ET COMMUNAUTAIRES

- 1 Les offices, conseils, commissions, personnes morales, bureaux, personnes ou organisations de personnes qui assurent le fonctionnement des organismes ci-dessous ou qui fournissent les services suivants :
 - a) les foyers pour enfants qui fonctionnent en vertu de la Loi de 1984 sur les services à l'enfance et à la famille (chap. 55);
 - b) les foyers pour personnes âgées et les maisons de repos qui fonctionnent en vertu de la Loi sur les foyers pour personnes âgées et les maisons de repos (L.R.O. 1980, chap. 203);
 - c) les services de consultation, d'aide spéciale et de formation du personnel qui sont achetés par des municipalités en vertu de la Loi sur l'aide sociale générale (L.R.O. 1980, chap. 188);

- (d) counselling services purchased by the Ministry of Community and Social Services under the Ministry of Community and Social Services Act (R.S.O. 1980, c. 273);
- (e) hostels providing services purchased by municipalities under the General Welfare Assistance Act (R.S.O. 1980, c. 188);
- (f) work activity projects under the General Welfare Assistance Act (R.S.O. 1980, c. 188) purchased by municipalities or the Ministry of Community and Social Services;
- (g) support services to the physically handicapped purchased by the Ministry of Community and Social Services under the Ministry of Community and Social Services Act (R.S.O. 1980, c. 273);
- (h) vocational rehabilitation services funded by the Ministry of Community and Social Services under the Vocational Rehabilitation Services Act (R.S.O. 1980, c. 525);
- (i) satellite homes operating or funded under the Homes for the Aged and Rest Homes Act (R.S.O. 1980, c. 203);
- (j) nursing services purchased or funded under the Homemakers and Nurses Services Act (R.S.O. 1980, c. 200);
- (k) workshops under the Vocational Rehabilitation Services Act (R.S.O. 1980, c. 525);
- (1) services funded under the Development Services Act (R.S.O. 1980, c. 118);
- (m) homes for retarded persons approved under the Homes for Retarded Persons Act (R.S.O. 1980, c. 201);
- (n) day nurseries operated by corporations or municipalities under the Day Nurseries Act (R.S.O. 1980, c. 111) receiving direct subsidies from the Ministry of Community and Social Services;
- (o) day nurseries and private home day-care agencies providing services and funded under agreements with municipalities under the Day Nurseries Act (R.S.O. 1980, c. 111);
- (p) credit counselling services receiving financial assistance under agreements with the Ministry of Community and Social Services under the Ministry of Community and Social Services Act (R.S.O. 1980, c. 273);
- (q) custody and detention facilities, probation and after-care services, residential services and supervisory services to children on probation under agreement with the Ministry of Community and Social Services under the Ministry of Community and Social Services Act (R.S.O. 1980, c. 273).

- d) les services de consultation qui sont achetés par le ministère des Services sociaux et communautaires en vertu de la *Loi sur le ministère des Services sociaux et communautaires* (L.R.O. 1980, chap. 273);
- e) les centres d'accueil qui fournissent des services qui sont achetés par des municipalités en vertu de la *Loi sur l'aide sociale générale* (L.R.O. 1980, chap. 188);
- f) des programmes d'adaptation au travail en vertu de la Loi sur l'aide sociale générale (L.R.O. 1980, chap. 188) qui sont achetés par des municipalités ou par le ministère des Services sociaux et communautaires;
- g) des services d'appoint pour les personnes atteintes d'un handicap physique qui sont achetés par le ministère des Services sociaux et communautaires en vertu de la *Loi sur le ministère des Services sociaux et communautaires* (L.R.O. 1980, chap. 273);
- h) des services de réadaptation professionnelle financés par le ministère des Services sociaux et communautaires en vertu de la *Loi sur les services de réadaptation professionnelle* (L.R.O. 1980, chap. 525);
- i) des foyers annexes qui fonctionnent ou qui sont financés en vertu de la Loi sur les foyers pour personnes âgées et les maisons de repos (L.R.O. 1980, chap. 203);
- j) des services de soins infirmiers qui sont achetés ou financés en vertu de la Loi sur les services d'aides familiales et d'infirmières visiteuses (L.R.O. 1980, chap. 200);
- k) des ateliers établis en vertu de la Loi sur les services de réadaptation professionnelle (L.R.O. 1980, chap. 525);
- I) des services financés en vertu de la Loi sur les services aux déficients mentaux (L.R.O. 1980, chap. 118);
- m) des foyers pour déficients mentaux agréés en vertu de la Loi sur les foyers pour déficients mentaux (L.R.O. 1980, chap. 201);
- n) des garderies dont le fonctionnement est assuré par des personnes morales ou des municipalités en vertu de la Loi sur les garderies (L.R.O. 1980, chap. 111) qui reçoivent des subventions directes du ministère des Services sociaux et communautaires;
- o) des garderies et des sociétés de garde d'enfants en maisons privées qui fournissent des services et qui sont financées aux termes d'ententes conclues avec des municipalités en vertu de la Loi sur les garderies (L.R.O. 1980, chap. 111);
- p) des services de consultation en matière de crédit qui reçoivent une aide financière aux termes d'ententes conclues avec le ministère des Services sociaux et communautaires en vertu de la Loi sur le ministère des Services sociaux et communautaires (L.R.O. 1980, chap. 273);
- q) des installations de garde et de détention, des services de probation et des services aux libérés, des services en établissement et des services de supervision aux enfants en probation aux termes d'une entente conclue avec le ministère des Services sociaux et communautaires en vertu de la Loi sur le ministère des Services sociaux et communautaires (L.R.O. 1980, chap. 273).

- 2. Societies within the meaning of the *Child and Family Services Act*, 1984 (c. 55) and agencies from whom such societies purchase child care services.
- 3. Corporations operating charitable institutions approved under the Charitable Institutions Act (R.S.O. 1980, c. 64).
- 4. Boards of management operating under the *Homes for the Aged and Rest Homes Act* (R.S.O. 1980, c. 203).
- 5. District Welfare Administration Boards operating under the *District Welfare Administration Boards Act* (R.S.O. 1980, c. 122).

MINISTRY OF CORRECTIONAL SERVICES

- 1. Any agency, board, commission, person or partnership that provides, under funding by the Ministry of Correctional Services,
 - (a) assistance to witnesses, victims of crime or disabled persons;
 - (b) educational, employment search, medical or promotional services;
 - (c) supervision of inmates, parolees, probationers or persons accused of crime;
 - (d) community residential services.

MINISTRY OF EDUCATION

1. Centre franco-ontarien de ressources pédagogiques.

MINISTRY OF HEALTH

- 1. Any authority, board, commission, corporation, office, person or organization of persons which operates or provides,
 - (a) an ambulance service, under the authority of a licence issued under the *Ambulance Act* (R.S.O. 1980, c. 20);
 - (b) a nursing home, under the authority of a licence issued under the *Nursing Homes Act* (R.S.O. 1980, c. 320);
 - (c) a laboratory or a specimen collection centre, under the authority of a licence issued under the *Laboratory and Specimen Collection Centre Licensing Act* (R.S.O. 1980, c. 409);
 - (d) a psychiatric facility within the meaning of the Mental Health Act
 (R.S.O. 1980, c. 262), the operation of which is funded in whole or
 in part by the Ministry of Health;
 - (e) a home for special care established, approved or licensed under the *Homes for Special Care Act* (R.S.O. 1980, c. 202);
 - (f) a home care facility within the meaning of Regulation 452 of Revised Regulations of Ontario, 1980 made under the *Health Insurance Act* (R.S.O. 1980, c. 197) or a facility which, by arrangement with any such home care facility,

- 2 Les sociétés au sens de la *Loi de 1984 sur les services à l'enfance et à la famille* (chap. 55) ainsi que les agences auprès desquelles ces sociétés achètent des services de soins aux enfants.
- 3 Les personnes morales qui assurent le fonctionnement d'établissements de bienfaisance agréés en vertu de la *Loi sur les établissements de bienfaisance* (L.R.O. 1980, chap. 64).
- 4 Les conseils de gestion qui fonctionnent en vertu de la Loi sur les foyers pour personnes âgées et les maisons de repos (L.R.O. 1980, chap. 203).
- 5 Les commissions de district pour l'administration de l'aide sociale fonctionnant en vertu de la *Loi sur les commissions de district pour l'administration de l'aide sociale* (L.R.O. 1980, chap. 122).

MINISTÈRE DES SERVICES CORRECTIONNELS

- 1 Les organismes, conseils, commissions, personnes ou sociétés en nom collectif qui fournissent, grâce au financement du ministère des Services correctionnels, les services suivants :
 - a) des services d'aide aux témoins, aux victimes d'actes criminels ou aux personnes handicapées;
 - b) des services d'enseignement, de recherche d'emploi, des services médicaux ou de promotion;
 - c) la surveillance de détenus, de personnes en liberté conditionnelle, de probationnaires ou de personnes accusées d'un acte criminel;
 - d) des services de placement en établissement communautaire.

MINISTÈRE DE L'ÉDUCATION

1 Centre franco-ontarien de ressources pédagogiques.

MINISTÈRE DE LA SANTÉ

- 1 Les offices, conseils, commissions, personnes morales, bureaux, personnes ou organisation de personnes qui assurent le fonctionnement des organismes ci-dessous ou qui fournissent les services suivants :
 - a) un service d'ambulance, aux termes d'un permis délivré en vertu de la *Loi sur les services d'ambulance* (L.R.O. 1980, chap. 20);
 - b) une maison de soins infirmiers, aux termes d'un permis délivré en vertu de la *Loi sur les maisons de soins infirmiers* (L.R.O. 1980, chap. 320);
 - c) un laboratoire médical ou un centre de prélèvements, aux termes d'un permis délivré en vertu de la *Loi autorisant des laboratoires médicaux* et des centres de prélèvements (L.R.O. 1980, chap. 409);
 - d) un établissement psychiatrique au sens de la *Loi sur la santé mentale* (L.R.O. 1980, chap. 262), dont le fonctionnement est financé entièrement ou en partie par le ministère de la Santé;
 - e) un foyer de soins spéciaux ouvert, agréé ou autorisé en vertu de la Loi sur les foyers de soins spéciaux (L.R.O. 1980, chap. 202);
 - f) un établissement de soins à domicile au sens du Règlement 452 des Règlements refondus de l'Ontario de 1980 pris en application de la

- (i) supplies nursing, physiotherapy, occupational therapy or speech therapy services that are insured home care services under section 44 of Regulation 452 of Revised Regulations of Ontario, 1980 made under the *Health Insurance Act* (R.S.O. 1980, c. 197), and
- (ii) is entitled to payment from the home care facility for or in respect of supplying such services;
- (g) a rehabilitation centre or a crippled children's centre listed in Schedule 10 to Regulation 452 of Revised Regulations of Ontario, 1980 made under the *Health Insurance Act* (R.S.O. 1980, c. 197);
- (h) a detoxification centre the operation of which is funded in whole or in part by the Ministry of Health;
- (i) an adult community mental health service the operation of which is, pursuant to an agreement in writing, funded in whole or in part by the Ministry of Health;
- (j) a placement service the operation of which is, pursuant to a "Placement Co-ordination Service Agreement" or other agreement in writing, funded in whole or in part by the Ministry of Health.
- 2. A district health council appointed under the *Ministry of Health Act* (R.S.O. 1980, c. 280).
- 3. A laundry that is operated exclusively for one or more than one hospital.
 - 4. Hospital Food Services—Ontario Inc.
 - 5. Toronto District Heating Corporation.
 - 6. Addiction Research Foundation.
- 7. The operations in Ontario of the Canadian Red Cross Society, other than the provision by the society of home support services for the elderly and homemaking services.
 - 8. The Hospital Council of Metropolitan Toronto.
 - 9. The Hospital Medical Records Institute.
 - 10. The Ontario Cancer Institute.
 - 11. The Ontario Cancer Treatment and Research Foundation.
 - 12. The Ontario Mental Health Foundation.
 - 13. The Toronto Institute of Medical Technology.

Loi sur l'assurance-maladie (L.R.O. 1980, chap. 197) ou un établissement qui, aux termes d'une entente avec l'établissement de soins à domicile en question, répond aux conditions suivantes :

- (i) fournit des services de soins infirmiers, des services de physiothérapie, d'ergothérapie ou d'orthophonie qui sont des services de soins à domicile assurés aux termes de l'article 44 du Règlement 452 des Règlements refondus de l'Ontario de 1980 pris en application de la Loi sur l'assurance-maladie (L.R.O. 1980, chap. 197),
- (ii) a droit au paiement, en contrepartie ou à l'égard de la fourniture des services en question, de frais qui lui sont versés par l'établissement des services à domicile en question;
- g) un centre de rééducation ou un centre pour enfants infirmes qui figure sur la liste de l'Annexe 10 du Règlement 452 des Règlements refondus de l'Ontario de 1980 pris en application de la *Loi sur l'assurance-maladie* (L.R.O. 1980, chap. 197);
- h) un centre de désintoxication dont le fonctionnement est financé entièrement ou en partie par le ministère de la Santé;
- i) un service communautaire de santé mentale aux adultes dont le fonctionnement est financé entièrement ou en partie par le ministère de la Santé, aux termes d'une entente conclue par écrit;
- j) un service de placement dont le fonctionnement est financé entièrement ou en partie par le ministère de la Santé, conformément à une «Entente de service de coordination des placements» ou d'une autre entente conclue par écrit.
- 2 Un conseil régional de santé établi en vertu de la *Loi sur le ministère de la Santé* (L.R.O. 1980, chap. 280).
- 3 Une blanchisserie qui est exploitée exclusivement aux fins d'un hôpital ou plus.
 - 4 Services alimentaires hospitaliers—Ontario Inc.
 - 5 Toronto District Heating Corporation.
 - 6 Fondation de la recherche sur la toxicomanie.
- 7 Les activités en Ontario de la Société canadienne de la Croix-Rouge, autres que la fourniture de services d'appoint à domicile pour les personnes âgées et de services d'aides familiales.
 - 8 The Hospital Council of Metropolitan Toronto.
 - 9 The Hospital Medical Records Institute.
 - 10 The Ontario Cancer Institute.
 - 11 The Ontario Cancer Treatment and Research Foundation.
 - 12 The Ontario Mental Health Foundation.
 - 13 The Toronto Institute of Medical Technology.

MINISTRY OF INDUSTRY, TRADE AND TECHNOLOGY

1. Metropolitan Toronto Convention Centre.

MINISTRY OF MUNICIPAL AFFAIRS

- 1. Any authority, board, commission, corporation, office, person or organization of persons which operates or provides,
 - (a) the collection, removal and disposal of garbage and other refuse for a municipality;
 - (b) the operation and maintenance of buses for the conveyance of passengers under an agreement with a municipality.

MINISTRY OF NATURAL RESOURCES

1. Conservation Authorities established under the Conservation Authorities Act (R.S.O. 1980, c. 85).

MINISTRY OF TOURISM AND RECREATION

1. St. Clair Parkway Commission.

MINISTRY OF TREASURY AND ECONOMICS

1. Ontario Municipal Employees Retirement Board.

MINISTÈRE DE L'INDUSTRIE, DU COMMERCE ET DE LA TECHNOLOGIE

1 Metropolitan Toronto Convention Centre.

MINISTÈRE DES AFFAIRES MUNICIPALES

- 1 Les offices, conseils, commissions, personnes morales, bureaux, personnes ou organisations de personnes qui assurent le fonctionnement des organismes ci-dessous ou qui fournissent les services suivants :
 - a) la collecte, l'enlèvement et l'élimination des ordures ménagères et d'autres déchets pour le compte d'une municipalité;
 - b) le maintien et l'exploitation d'autobus pour le transport de passagers aux termes d'une entente conclue avec une municipalité.

MINISTÈRE DES RICHESSES NATURELLES

1 Les offices de protection de la nature créés en vertu de la Loi sur les offices de protection de la nature (L.R.O. 1980, chap. 85).

MINISTÈRE DU TOURISME ET DES LOISIRS

1 St. Clair Parkway Commission.

MINISTÈRE DU TRÉSOR ET DE L'ÉCONOMIE

1 La Commission du régime de retraite des employés municipaux de l'Ontario.







2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 155

An Act respecting Simcoe Day

Mr. McLean



1st Reading

November 24th, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to change the name of the public holiday celebrated in many municipalities on the first Monday in August from "Civic Holiday" to Simcoe Day in honour of John Graves Simcoe who was appointed first Lieutenant Governor of Upper Canada on September 12th, 1791, and who convened the first legislative assembly and established the capital of the Province at York, now Toronto.

Bill 155 1986

An Act respecting Simcoe Day

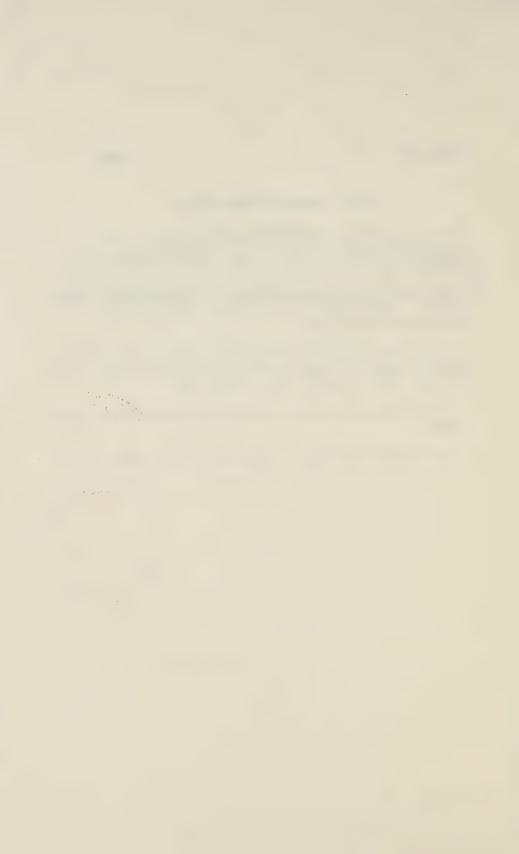
HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Where the first Monday in August in any year is proclaimed a public holiday in a municipality, the name of the holiday shall be Simcoe Day.

2. Any Act, regulation, proclamation, contract or document that refers to a public holiday by the name of "Civic Holiday" shall be deemed to refer to Simcoe Day.

3. This Act comes into force on the day it receives Royal Commence-Assent.

4. The short title of this Act is the Simcoe Day Act, 1986. Short title



Publications

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 156

An Act to amend the Securities Act

The Hon. M. Kwinter *Minister of Financial Institutions*



1st Reading

November 24th, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

The principal purposes of the Bill are as follows:

- 1. Under section 2, the Lieutenant Governor in Council will be authorized to appoint up to two additional persons as members of the Commission and to designate an additional Vice-Chairman.
- 2. Under the Business Corporations Act, 1982, provision is made for the clearing of securities through the facilities of a clearing agency recognized by the Commission. The proposed clause 18 (1) (a), section 21a and paragraph 18a of section 139 of the Act, as set out in sections 3, 4 and 12 of the Bill, provide for a regulatory framework with respect to the recognition of such clearing agencies. The new definitions set out in section 1 of the Bill are complementary to the provisions related to clearing agencies.
- 3. Under section 7, Part XIX of the Act is re-enacted. Part XIX relates to take-over bids and issuer bids. Among the significant changes are the following:
 - 1. The requirement for follow-up offers as set out in the present subsection 91 (1) of the Act is replaced by new restrictions on the availability of the private agreement exemption. (Proposed clause 92 (1) (c))
 - 2. An early warning system is established whereby, when an offeror's holdings in any class of voting or non-voting participating securities of an issuer reaches 10 per cent, the offeror will be required to make public disclosure of the fact. (Proposed section 100)
 - 3. Provision is made for the integration with the bid of acquisitions made through private transactions during the ninety day period preceding a take-over bid so that offerees under the bid will receive consideration equal to the consideration paid in the private transactions. (Proposed subsection 93 (4))
 - An offeror and those acting jointly or in concert with an offeror will be treated as one offeror.
 - 5. Restrictions on conditions in take-over bids are removed.
 - The take-over bid and issuer bid requirements in the proposed sections 94 to 99 will be made applicable to voluntary acquisitions of non-voting participating securities.
 - 7. Take-over bids and issuer bids that are made in jurisdictions with acceptable rules related to bids and that have slight connection with Ontario will be exempted from the take-over bid and issuer bid requirements of the Act. (Proposed clauses 92 (1) (e) and 92 (3) (h))
 - 8. Restrictions will apply to acquisitions of securities that were subject to a takeover bid or an issuer bid for a period of twenty days following the expiry of the bid. (Proposed subsection 93 (6))
 - 9. Amendments are made to the rules governing take-over bids and issuer bids.
 - Under the proposed section 100e, the existing Part XIX will continue to apply in respect of take-over bids and issuer bids commenced before the new Part XIX comes into force.
 - 11. New remedial powers are conferred on the Commission and on the High Court. (Proposed sections 100c and 100d)

The amendments to the Act set out in sections 5, 6, 8, 9, 10, 11 and 12 of the Bill are complementary to the enactment of the new Part XIX of the Act.

Bill 156 1986

An Act to amend the Securities Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- **1.** Subsection 1 (1) of the *Securities Act*, being chapter 466 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following paragraphs:
 - 2a. "clearing agency" means a person or company that acts as an intermediary in paying funds or delivering securities, or both, in connection with trades in securities and that provides centralized facilities for the clearing of trades in securities;
 - 34a. "recognized clearing agency" means a person or company that is designated as a recognized clearing agency by the Commission.
- **2.** Subsection 2 (2) of the said Act is repealed and the following substituted therefor:
- (2) The Commission shall be composed of a Chairman and Appointments not more than ten or less than eight other members, appointed by the Lieutenant Governor in Council, two of whom may be designated as Vice-Chairmen.

iom may be designated as vice-Chairmen.

- **3.** Clause 18 (1) (a) of the said Act is repealed and the following substituted therefor:
 - (a) the financial affairs of a recognized clearing agency, registrant or reporting issuer; and

4. The said Act is amended by adding thereto the following Part:

PART VIII-A

CLEARING AGENCIES

Recognition of clearing agencies

21a.—(1) Upon the application of a person or company carrying on or proposing to carry on the business of a clearing agency, the Commission may designate the person or company as a recognized clearing agency where the Commission is satisfied that to do so would be in the public interest and that the person or company can comply with the regulations and all terms and conditions imposed by the Commission with respect to the designation.

Commission's powers

(2) The Commission, in designating a person or company as a recognized clearing agency, shall make the designation in writing and the designation may be made subject to such terms and conditions as the Commission may impose.

Idem

(3) The Commission, after giving a recognized clearing agency an opportunity to be heard, may suspend or cancel its designation as a recognized clearing agency or may impose terms and conditions upon the designation where in its opinion such action is in the public interest.

Idem

(4) The Commission, where it appears to it to be in the public interest, may make any decision with respect to any constating document, general agreement with its participants or members, by-law, rule, regulation, procedure or practice of a recognized clearing agency, including, without limiting the generality of the foregoing, suspending the operation of or requiring an amendment to any such constating document, general agreement, by-law, rule, regulation, procedure or practice.

Review of decisions of recognized clearing agency

- (5) Any person or company directly affected by any direction, order or decision made under any by-law, rule, regulation, procedure or practice of a recognized clearing agency may apply to the Commission for a hearing and review thereof and section 8 applies to the hearing and review in the same manner as to the hearing and review of a decision of the Director.
- 5. Paragraph 17 of subsection 34 (1) of the said Act is repealed and the following substituted therefor:
 - 17. A trade in a security to a person or company pursuant to a take-over bid or issuer bid made by that person or company.

1986 SECURITIES Bill 156 3

6. Clause 71 (1) (k) of the said Act is repealed and the following substituted therefor:

- (k) the trade is made in a security to a person or company pursuant to a take-over bid or issuer bid made by that person or company.
- 7. Part XIX of the said Act is repealed and the following substituted therefor:

PART XIX

TAKE-OVER BIDS AND ISSUER BIDS

88.—(1) In this Part,

Definitions

- "business day" means a day other than a Saturday or a holiday;
- "class of securities" includes a series of a class of securities;
- "equity security" means any security of an issuer that carries a residual right to participate in the earnings of the issuer and, upon the liquidation or winding up of the issuer, in its assets;

"formal bid" means,

- (a) a take-over bid or an issuer bid to which section 94 applies, or
- (b) a take-over bid that is exempted from sections 94 to 99 or an issuer bid that is exempted from sections 94, 95, 96, 97 and 99,
 - (i) by reason of an exemption under clause 92 (1) (a) or 92 (3) (e), if the offeror is required to deliver to every security holder whose last address as shown on the books of the offeree issuer is in Ontario a disclosure document of the type contemplated by subsection 127 (10), or
 - (ii) by reason of an exemption under clause 92 (1) (e) or 92 (3) (h), if the offeror is required to deliver disclosure material relating to the bid to holders of the class of securities subject to the bid;

"interested person" means, for the purposes of sections 100c and 100d,

- (a) an offeree issuer,
- (b) a security holder, director or officer of an offeree issuer,
- (c) an offeror,
- (d) the Director, and
- (e) any person or company not referred to in clauses (a) to (d) who in the opinion of the Commission or the Court, as the case may be, is a proper person to make an application under section 100c or 100d, as the case may be;
- "issuer bid" means an offer to acquire or redeem securities of an issuer made by the issuer to any person or company who is in Ontario or to any security holder of the issuer whose last address as shown on the books of the issuer is in Ontario and includes a purchase, redemption or other acquisition of securities of the issuer by the issuer from any such person or company, but does not include an offer to acquire or redeem debt securities that are not convertible into securities other than debt securities;

"offer to acquire" includes,

- (a) an offer to purchase, or a solicitation of an offer to sell, securities,
- (b) an acceptance of an offer to sell securities, whether or not such offer to sell has been solicited,

or any combination thereof, and the person or company accepting an offer to sell shall be deemed to be making an offer to acquire to the person or company that made the offer to sell;

- "offeree issuer" means an issuer whose securities are the subject of a take-over bid, an issuer bid or an offer to acquire;
- "offeror" means a person or company who makes a take-over bid, an issuer bid or an offer to acquire and, for the purposes of section 100, includes a person or company who acquires a security, whether or not by way of a take-over bid, issuer bid or offer to acquire;

- "offeror's securities" means securities of an offeree issuer beneficially owned, or over which control or direction is exercised, on the date of an offer to acquire, by an offeror or any person or company acting jointly or in concert with the offeror:
- "published market" means, as to any class of securities, any market on which such securities are traded if the prices at which they have been traded on that market are regularly published in a *bona fide* newspaper or business or financial publication of general and regular paid circulation;
- "take-over bid" means an offer to acquire outstanding voting or equity securities of a class made to any person or company who is in Ontario or to any security holder of the offeree issuer whose last address as shown on the books of the offeree issuer is in Ontario, where the securities subject to the offer to acquire, together with the offeror's securities, constitute in the aggregate 20 per cent or more of the outstanding securities of that class of securities at the date of the offer to acquire.
 - (2) For the purposes of this Part,

Computation of time, expiry of bid

- (a) a period of days shall be computed as commencing on the day next following the event which began the period and terminating at midnight on the last day of the period, except that if the last day of the period does not fall on a business day, the period terminates at midnight on the next business day; and
- (b) a take-over bid or an issuer bid expires at the later of,
 - (i) the end of the period, including any extension, during which securities may be deposited pursuant to the bid, and
 - (ii) the time at which the offeror becomes obligated by the terms of the bid to take-up or reject securities deposited thereunder.
- (3) For the purposes of this Part,

Convertible securities

(a) a security shall be deemed to be convertible into a security of another class if, whether or not on conditions, it is or may be convertible into or exchangeable for, or if it carries the right or obligation to

acquire, a security of the other class, whether of the same or another issuer; and

(b) a security that is convertible into a security of another class shall be deemed to be convertible into a security or securities of each class into which the second-mentioned security may be converted, either directly or through securities of one or more other classes of securities that are themselves convertible.

Deemed beneficial ownership **89.**—(1) For the purposes of this Part, in determining the beneficial ownership of securities of an offeror or of any person or company acting jointly or in concert with the offeror, at any given date, the offeror, person or company shall be deemed to have acquired and be the beneficial owner of a security, including an unissued security, if the offeror, person or company is the beneficial owner of any security convertible within sixty days following such date into such a security or has the right or obligation, whether or not on conditions, to acquire within such sixty days beneficial ownership of the security whether through the exercise of an option, warrant, right or subscription privilege or otherwise.

Calculation of holdings, joint offers

(2) Where two or more offerors acting jointly or in concert make one or more offers to acquire securities of a class, the securities subject to any such offer or offers to acquire shall be deemed to be securities subject to the offer to acquire of each such offeror for the purpose of determining whether any such offeror is making a take-over bid.

Unissued securities deemed outstanding (3) Where an offeror or any person or company acting jointly or in concert with the offeror is deemed by reason of subsection (1) to be the beneficial owner of unissued securities, the securities shall be deemed to be outstanding for the purpose of calculating the number of outstanding securities of that class in respect of that offeror's offer to acquire.

Acting jointly or in concert

- **90.**—(1) For the purposes of this Part, it is a question of fact as to whether a person or company is acting jointly or in concert with an offeror and, without limiting the generality of the foregoing, the following shall be presumed to be acting jointly or in concert with an offeror:
 - 1. Every person or company who, as a result of any agreement, commitment or understanding, whether formal or informal, with the offeror or with any other person or company acting jointly or in concert with the offeror, acquires or offers to acquire securities of the issuer of the same class as those subject to the offer to acquire.

- 7
- Every person or company who, as a result of any agreement, commitment or understanding, whether formal or informal, with the offeror or with any other person or company acting jointly or in concert with the offeror, intends to exercise jointly or in concert with the offeror or with any other person or company acting jointly or in concert with the offeror any voting rights attaching to any securities of the offeree issuer.
- Every associate or affiliate of the offeror.

(2) Notwithstanding subsection (1), a registered dealer act-Limitation ing solely in an agency capacity for the offeror in connection with a take-over bid or an issuer bid and not executing principal transactions for its own account in the class of securities subject to the offer to acquire or performing services beyond customary dealer's functions shall not be presumed solely by reason of such agency relationship to be acting jointly or in concert with the offeror in connection with the bid.

91. For the purposes of this Part, a reference to an offer Application to acquire or to the acquisition or ownership of securities or to direct and control or direction over securities shall be construed to indirect include a direct or indirect offer to acquire or the direct or indirect acquisition or ownership of securities, or the direct or indirect control or direction over securities, as the case may be.

92.—(1) Subject to the regulations, a take-over bid is Exempted exempt from sections 94 to 99 if,

take-over

- (a) the bid is made through the facilities of a stock exchange recognized by the Commission for the purposes of this clause;
- (b) the bid is for not more than 5 per cent of the outstanding securities of a class of securities of the issuer and.
 - (i) the aggregate number of securities acquired by the offeror and any person or company acting jointly or in concert with the offeror within any period of twelve months in reliance upon the exemption provided by this clause does not, when aggregated with acquisitions otherwise made by the offeror and any person or company acting jointly or in concert with the offeror within the same twelve month period, constitute in excess of 5 per cent of

- the outstanding securities of that class of the issuer at the commencement of the twelve month period, and
- (ii) if there is a published market for the securities acquired, the value of the consideration paid for any of the securities acquired is not in excess of the market price at the date of acquisition determined in accordance with the regulations plus reasonable brokerage fees or commissions actually paid;
- (c) all of the following conditions apply,
 - (i) purchases are made from not more than five persons or companies in the aggregate, including persons or companies outside of Ontario,
 - (ii) the bid is not made generally to security holders of the class of securities that is the subject of the bid, and
 - (iii) the value of the consideration paid for any of the securities, including brokerage fees or commissions, does not exceed 115 per cent of the market price of securities of that class at the date of the bid determined in accordance with the regulations;
- (d) the offeree issuer is not a reporting issuer, there is not a published market in respect of the securities that are the subject of the bid, and the number of holders of securities of that class is not more than fifty, exclusive of holders who are in the employment of the offeree issuer or an affiliate of the offeree issuer, and exclusive of holders who were formerly in the employment of the offeree issuer or an affiliate of the offeree issuer and who while in that employment were, and have continued after that employment to be, security holders of the offeree issuer:
- (e) the number of holders, whose last address as shown on the books of the offeree issuer is in Ontario, of securities of the class subject to the bid is fewer than fifty and the securities held by such holders constitute, in the aggregate, less than 2 per cent of the outstanding securities of that class, the bid is made in compliance with the laws of a jurisdiction that is recognized for the purposes of this clause by

the Commission, and all material relating to the bid that is sent by the offeror to holders of securities of the class that is subject to the bid is concurrently sent to all holders of such securities whose last address as shown on the books of the offeree issuer is in Ontario and filed; or

- (f) it is exempted by the regulations.
- (2) For the purposes of clause (1) (c), where an offeror Determimakes an offer to acquire securities from a person or company of number of and the offeror knows or ought to know after reasonable security enquiry that.

- (a) one or more other persons or companies on whose behalf that person or company is acting as nominee, agent, trustee, executor, administrator or other legal representative has a direct beneficial interest in those securities, then each of such others shall be included in the determination of the number of persons and companies to whom the offer to acquire has been made, but, where an inter vivos trust has been established by a single settlor or where an estate has not vested in all persons beneficially entitled thereto, the trust or estate shall be considered a single security holder in such determination; or
- (b) the person or company acquired the securities in order that the offeror might make use of the exemption provided by clause (1) (c), then each person or company from whom those securities were acquired shall be included in the determination of the number of persons and companies to whom the offer to acquire has been made.
- (3) Subject to the regulations, an issuer bid is exempt from Exempted sections 94, 95, 96, 97 and 99 if,

- the securities are purchased, redeemed or otherwise acquired in accordance with terms and conditions attaching thereto that permit the purchase, redemption or acquisition of the securities by the issuer without the prior agreement of the owners of the securities, or where the securities are acquired to meet sinking fund or purchase fund requirements;
- (b) the purchase, redemption or other acquisition is required by the instrument creating or governing the class of securities or by the statute under which

the issuer was incorporated, organized or continued:

- (c) the securities carry with them or are accompanied by a right of the owner of the securities to require the issuer to redeem or repurchase the securities and the securities are acquired pursuant to the exercise of such right;
- (d) the securities are acquired from a current or former employee of the issuer or of an affiliate of the issuer, and if there is a published market in respect of the securities,
 - (i) the value of the consideration paid for any of the securities acquired does not exceed the market price of the securities at the date of the acquisition determined in accordance with the regulations, and
 - (ii) the aggregate number or, in the case of convertible debt securities, the aggregate principal amount of securities acquired by the issuer within a period of twelve months in reliance on the exemption provided by this clause does not exceed 5 per cent of the securities of that class issued and outstanding at the commencement of the period;
- (e) the bid is made through the facilities of a stock exchange recognized by the Commission for the purpose of this clause;
- (f) following the publication of a notice of intention in the form and manner prescribed by the regulations, the issuer purchases securities in the normal course in the open market, including through the facilities of a stock exchange, if the aggregate number, or, in the case of convertible debt securities, the aggregate principal amount, of securities acquired by the issuer within a period of twelve months in reliance on the exemption provided by this clause does not exceed 5 per cent of the securities of that class issued and outstanding at the commencement of the period;
- (g) the issuer is not a reporting issuer, there is not a published market in respect of the securities that are the subject of the bid and the number of holders of securities of the issuer is not more than fifty,

exclusive of holders who are in the employment of the issuer or an affiliate of the issuer, and exclusive of holders who were formerly in the employment of the issuer or an affiliate of the issuer and who while in that employment were, and have continued after the employment to be, security holders of the issuer:

- (h) the number of holders, whose last address as shown on the books of the issuer is in Ontario, of securities of the class subject to the bid is fewer than fifty and the securities held by such holders constitute, in the aggregate, less than 2 per cent of the outstanding securities of that class, the bid is made in compliance with the laws of a jurisdiction that is recognized for the purposes of this clause by the Commission, and all material relating to the bid that is sent by the offeror to holders of securities of the class that is subject to the bid is concurrently sent to all holders of such securities whose last address as shown on the books of the issuer is in Ontario and filed: or
- (i) it is exempted by the regulations.

1986

(4) A bid that is made in reliance upon any exemption in Stock this section through the facilities of a stock exchange shall be requirements made in accordance with the by-laws, regulations and policies of the exchange.

93.—(1) In this section, "offeror" means,

Definition

- an offeror making a formal bid other than a bid referred to in clause 92 (1) (e) or 92 (3) (h);
- (b) a person or company acting jointly or in concert with an offeror referred to in clause (a):
- a security holder of an offeror referred to in clause (c) (a) who, as regards the offeror, is a person or company or a member of a combination of persons or companies referred to in subparagraph iii of paragraph 11 of subsection 1 (1) or an associate or affiliate of such security holder.
- (2) An offeror shall not offer to acquire or make, or enter Restrictions into, any agreement, commitment or understanding to acquire acquisitions beneficial ownership of any securities of the class that are sub-during takeject to a take-over bid otherwise than pursuant to the bid on bid

and from the day of the announcement of the offeror's intention to make the bid until its expiry.

Permitted purchases during take-over bid

- (3) Notwithstanding subsection (2), an offeror making a take-over bid may purchase, through the facilities of a stock exchange recognized by the Commission for the purpose of clause 92 (1) (a), securities of the class that are subject to the bid and securities convertible into securities of that class commencing on the third business day following the date of the bid until the expiry of the bid, if,
 - (a) the intention to make such purchases is stated in the take-over bid circular;
 - (b) the aggregate number of securities acquired under this subsection does not constitute in excess of 5 per cent of the outstanding securities of that class as at the date of the bid; and
 - (c) the offeror issues and files a press release forthwith after the close of business of the exchange on each day on which securities have been purchased under this subsection disclosing the information prescribed by the regulations.

Restrictions on acquisition during issuer bid (4) An offeror making an issuer bid shall not offer to acquire, or make or enter into any agreement, commitment or understanding to acquire, beneficial ownership of any securities of the class that are subject to the bid otherwise than pursuant to the bid on and from the day of the announcement of the offeror's intention to make the bid until the bid's expiry, but this subsection does not apply so as to prevent the offeror from purchasing, redeeming or otherwise acquiring any such securities during such period in reliance on an exemption under clause 92 (3) (a), (b) or (c).

Integration with pre-bid private transactions

- (5) Where a take-over bid that is a formal bid is made by an offeror and, within the period of ninety days immediately preceding the bid, the offeror acquired beneficial ownership of securities of the class subject to the bid pursuant to a transaction not generally available on identical terms to holders of that class of securities,
 - (a) the offeror shall offer consideration for securities deposited under the bid at least equal to the highest consideration that was paid on a per security basis under any of such prior transactions or the offeror shall offer at least the cash equivalent of such consideration; and

- (b) the offeror shall offer to acquire under the bid that percentage of securities of the class subject to the bid that is at least equal to the highest percentage that the number of securities acquired from a seller in such a prior transaction was of the total number of securities of that class beneficially owned by such seller at the time of the prior transaction.
- (6) An offeror shall not acquire beneficial ownership of Restriction securities of the class that was subject to the bid by way of a post-bid transaction that is not generally available on identical terms to acquisition holders of that class of securities during the period beginning with the expiry of the bid and ending at the end of the twentieth business day thereafter, and whether or not any securities are taken up under the bid.

13

(7) Subsections (5) and (6) do not apply to trades effected Exceptions, in the normal course on a published market, so long as,

trades

- (a) any broker acting for the purchaser or seller does not perform services beyond the customary broker's function and does not receive more than reasonable fees or commissions:
- (b) the purchaser or any person or company acting for the purchaser does not solicit or arrange for the solicitation of offers to sell securities of the class subject to the bid; and
- (c) the seller or any person or company acting for the seller does not solicit or arrange for the solicitation of offers to buy securities of the class subject to the
- (8) An offeror shall not, except pursuant to the bid, sell or Sales during make or enter into any agreement, commitment or under-prohibited standing to sell any securities of the class subject to the bid on and from the day of the announcement of the offeror's intention to make the bid until its expiry.

(9) Notwithstanding subsection (8), an offeror, before the Exception expiry of a bid, may make or enter into an arrangement, commitment or understanding to sell securities that may be taken up by the offeror pursuant to a bid, after the expiry of the bid, if the intention to sell is disclosed in the take-over bid circular or issuer bid circular, as the case may be.

94. Subject to the regulations, the following rules apply to General every take-over bid and issuer bid:

Delivery of bid 1. The bid shall be made to all holders of securities of the class that is subject to the bid who are in Ontario, and delivered by the offeror to all holders, whose last address as shown on the books of the offeree issuer is in Ontario, of securities of that class and of securities that, before the expiry of the bid, are convertible into securities of that class.

SECURITIES

Minimum deposit period 2. The offeror shall allow at least twenty-one days from the date of the bid during which securities may be deposited pursuant to the bid.

When taking up prohibited 3. No securities deposited pursuant to the bid shall be taken up by the offeror until the expiration of twenty-one days from the date of the bid.

Withdrawal

- 4. Securities deposited pursuant to the bid may be withdrawn by or on behalf of a depositing security holder.
 - i. at any time before the expiration of twentyone days from the date of the bid,
 - ii. at any time before the expiration of ten days from the date of a notice of change or variation under section 97, and
 - iii. where the securities have not been taken up and paid for by the offeror, after forty-five days from the date of the bid.

Exception

- 5. The right of withdrawal conferred by subparagraph ii of paragraph 4 does not apply,
 - i. where the securities have been taken up by the offeror at the date of the notice,
 - ii. where a variation in the terms of a bid consists solely of an increase in the consideration offered for the securities subject to the bid and the time for deposit is not extended for a period greater than that required by subsection 97 (5), or
 - iii. in the circumstances described in subsection 97 (6).

Notice of withdrawal

6. Notice of withdrawal of any securities under paragraph 4 shall be made by or on behalf of the depositing security holder by a method that provides the

depositary designated under the bid with a written or printed copy and, to be effective, the notice must be actually received by the depositary and, where notice is given in accordance with this paragraph. the offeror shall return the securities to the depositing security holder.

Where the bid is made for less than all of the class Pro rata of securities subject to the bid and where a greater number of securities is deposited pursuant thereto than the offeror is bound or willing to acquire under the bid, the securities shall be taken up and paid for by the offeror, as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each depositing security holder.

Where an offeror purchases securities as permitted Effect of 8. by subsection 93 (3), the securities so purchased purchases shall be counted in the determination of whether a condition as to the minimum number of securities to be deposited in the bid has been fulfilled, but shall not reduce the number of securities the offeror is bound under the bid to take up.

9. Subject to paragraphs 10 and 11, the offeror shall When take up and pay for securities deposited under the must be bid, where all the terms and conditions of the bid taken have been complied with or waived, not later than ten days after the expiry of the bid.

securities

Any securities that are taken up by the offeror Idem 10. under the bid shall be paid for by the offeror as soon as possible, and in any event not more than three days, after the taking up of the securities.

Any securities deposited pursuant to the bid subse- Idem quent to the date on which the offeror first takes up securities deposited under the bid shall be taken up and paid for by the offeror within ten days of the deposit of the securities.

A bid may not be extended by the offeror, where Extension all the terms and conditions thereof have been complied with except those waived by the offeror, unless the offeror first takes up and pays for all securities deposited thereunder and not withdrawn.

13. Where all the terms and conditions of the bid have Press release been complied with or waived, the offeror shall forthwith issue a notice by press release to that

effect, which press release shall disclose the approximate number of securities deposited and the approximate number that will be taken up.

Financing of bid

95. Where a take-over bid or issuer bid provides that the consideration for the securities deposited pursuant to the bid is to be paid in cash or partly in cash, the offeror shall make adequate arrangements prior to the bid to ensure that the required funds are available to effect payment in full for all securities that the offeror has offered to acquire.

Identical consideration

96.—(1) Subject to the regulations, where a take-over bid or issuer bid is made, all holders of the same class of securities shall be offered identical consideration.

Collateral benefit (2) If an offeror makes or intends to make a take-over bid or issuer bid, neither the offeror nor any person or company acting jointly or in concert with the offeror shall enter into any collateral agreement, commitment or understanding with any holder or beneficial owner of securities of the offeree issuer that has the effect of providing to the holder or owner a consideration of greater value than that offered to the other holders of the same class of securities.

Increasing consideration

(3) Where a variation in the terms of a take-over bid or issuer bid before the expiry of the bid increases the value of the consideration offered for the securities subject to the bid, the offeror shall pay such increased consideration to each person or company whose securities are taken up pursuant to the bid, whether or not such securities were taken up by the offeror before the variation.

Offeror's circular

97.—(1) An offeror shall deliver, with or as part of a take-over bid or issuer bid, a take-over bid circular or issuer bid circular, as the case may be.

Notice of change in information (2) Where, before the expiry of a take-over bid or issuer bid or after the expiry of the bid but before the expiry of all rights to withdraw the relevant securities, a change has occurred in the information contained in a take-over bid circular or issuer bid circular or in any notice of change or notice of variation that would reasonably be expected to affect the decision of the holders of the securities of the offeree issuer to accept or reject the bid, a notice of the change shall be delivered to every person or company to whom the circular was required to be delivered and whose securities were not taken up at the date of the occurrence of the change.

Idem

(3) Subsection (2) does not apply to a change that is not within the control of the offeror or of an affiliate of the offer-

ror unless it is a change in a material fact relating to the securities being offered in exchange for securities of the offeree issuer.

(4) Where there is a variation in the terms of a take-over Variation in bid or issuer bid, including any extension of the period during which securities may be deposited thereunder and whether or not the variation results from the exercise of any right contained in the bid, a notice of the variation shall be delivered to every person or company to whom the take-over bid circular or issuer bid circular was required to be delivered and whose securities were not taken up at the date of the variation.

terms of bid

Bill 156

(5) Subject to subsection (6), where there is a variation in Idem the terms of a take-over bid or issuer bid, the period during which securities may be deposited pursuant to the bid shall not expire before ten days after the notice of variation has been delivered.

(6) Subsection (5) does not apply to a variation in the terms Idem of a bid consisting solely of the waiver of a condition in the bid where the consideration offered for the securities that are subject to the bid consists solely of cash.

(7) A take-over bid circular, issuer bid circular, notice of Content change and notice of variation shall be in the form and shall contain the information required by this Part and the regulations

98.—(1) Where a take-over bid has been made, a direc- Directors' tors' circular shall be prepared and delivered by the board of directors of an offeree issuer to every person and company to whom a take-over bid must be delivered under paragraph 1 of section 94, not later than ten days after the date of the bid.

(2) The board of directors shall include in a directors' circu-Recommenlar either a recommendation to accept or to reject a take-over bid and the reasons for their recommendation, or a statement that they are unable to make or are not making a recommendation and if no recommendation is made, the reasons for not making a recommendation.

(3) An individual director or officer may recommend Individual acceptance or rejection of a take-over bid if the director or director's officer delivers with the recommendation a circular prepared circular in accordance with the regulations.

(4) Where a board of directors is considering recommending acceptance or rejection of a take-over bid, it shall, at the

Advising of consideration time of sending or delivering a directors' circular, advise the security holders of this fact and may advise them not to tender their securities until further communication is received from the directors.

Advising of decision of directors

(5) Where subsection (4) applies, the board of directors shall deliver the recommendation or the decision not to make a recommendation at least seven days before the scheduled expiry of the period during which securities may be deposited under the bid.

Notice of change

- (6) Where, before the expiry of a take-over bid or after the expiry of the bid but before the expiry of all rights to withdraw the securities that have been deposited under the bid,
 - (a) a change has occurred in the information contained in a directors' circular or in any notice of change to a directors' circular that would reasonably be expected to affect the decision of the holders of the securities to accept or reject the bid, the board of directors of the offeree issuer shall forthwith deliver a notice of the change to every person or company to whom the circular was required to be sent disclosing the nature and substance of the change; or
 - (b) a change has occurred in the information contained in an individual director's or officer's circular or any notice of change thereto that would reasonably be expected to affect the decision of the holders of the securities to accept or reject the bid, other than a change that is not within the control of the individual director or officer, as the case may be, the individual director or officer, as the case may be, shall forthwith deliver a notice of change in relation thereto to the board of directors.

Circulation of individual circulars and notices

(7) Where an individual director or officer submits a circular under subsection (3) or a notice of change under clause (6) (b) to the board of directors, the board, at the offeree issuer's expense, shall deliver a copy of the circular or notice to the persons and companies referred to in subsection (1).

Content

(8) A directors' circular, director's or officer's circular and a notice of change shall be in the form and contain the information required by this Part and the regulations.

Delivery to offeree issuer **99.**—(1) A take-over bid and any notice of change or variation shall be filed and shall be delivered to the offeree issuer at its principal office and an issuer bid and any notice of change or variation shall be filed on the day such bid or notice

is delivered to holders of securities of the offeree issuer, or as soon as practicable thereafter.

(2) Every directors' circular and every individual director's Delivery to or officer's circular or any notice of change in relation thereto that is delivered to security holders of an offeree issuer shall Commission be filed and shall be delivered to the offeror at its principal office on the day the directors' circular or individual director's or officer's circular or the notice of change is delivered to the holders of securities of the offeree issuer, or as soon as practicable thereafter.

offeree issuer

(3) A take-over bid or issuer bid, a take-over bid circular, Delivery and an issuer bid circular, a directors' circular, an individual director's or officer's circular and every notice of change or variation in any such bid or circular shall be mailed by prepaid first class mail or delivered by personal delivery or in such other manner as the Director may approve to the intended recipient and any bid, circular or notice so mailed or delivered shall be deemed to have been delivered and such bid, circular or notice shall be deemed conclusively for the purposes of sections 94, 97 and 98 and this section to have been dated as of the date on which it was so mailed or delivered to all or substantially all of the persons and companies entitled to receive it.

100.—(1) Every offeror that acquires beneficial ownership Securities, of, or the power to exercise control or direction over, or securities convertible into, voting or equity securities of any class of a reporting issuer that, together with such offeror's securities of that class, would constitute 10 per cent or more of the outstanding securities of that class,

- shall issue and file forthwith a press release containing the information prescribed by the regulations; and
- (b) within two business days, shall file a report containing the same information as is contained in the press release issued under clause (a).
- (2) Where an offeror is required to file a report under sub- Change in section (1) or a further report under this subsection and the offeror or any person acting jointly or in concert with the offeror acquires beneficial ownership of, or the power to exercise control or direction over, or securities convertible into, an additional 2 per cent or more of the outstanding securities of the class or there is a change in any other material fact in such a report, the offeror,

material facts

- (a) shall issue and file forthwith a press release containing the information prescribed by the regulations;
- (b) within two business days, shall file a report containing the same information as is contained in the press release issued under clause (a).

Restrictions on acquisitions

(3) During the period commencing on the occurrence of an event in respect of which a report or further report is required to be filed under this section and terminating on the expiry of one business day from the date that the report or further report is filed, neither the offeror nor any person or company acting jointly or in concert with the offeror shall acquire or offer to acquire beneficial ownership of any securities of the class in respect of which the report or further report is required to be filed or any securities convertible into securities of that class.

Exception

(4) Subsection (3) does not apply to an offeror that is the beneficial owner of, or has the power to exercise control or direction over, securities that, together with such offeror's securities of that class, constitute 20 per cent or more of the outstanding securities of that class.

Press release re acquisitions by person other than offeror during bid 100a.—(1) Where, after a formal bid has been made for voting or equity securities of an offeree issuer that is a reporting issuer and before the expiry of the bid, an offeror, other than the person or company making the bid, acquires beneficial ownership of, or the power to exercise control or direction over, securities of the class subject to the bid which, when added to such offeror's securities of that class, constitute 5 per cent or more of the outstanding securities of that class, the offeror shall, not later than the opening of trading on the next business day, issue a press release containing the information prescribed by the regulations and, forthwith, the offeror shall file a copy of the press release.

Further press releases

(2) Where an offeror that has filed a press release under subsection (1) or a further press release under this subsection or any person or company acting jointly or in concert with the offeror acquires beneficial ownership of, or control or direction over, securities of the class subject to the bid which, when added to the securities of that class acquired after the filing of the press release by the offeror and any person or company acting jointly or in concert with the offeror, aggregates an additional 2 per cent or more of the class of outstanding securities, the offeror shall, not later than the opening of trading on the next business day, issue a further press release

containing the information prescribed by the regulations and. forthwith, the offeror shall file a copy of the press release.

SECURITIES

100b. Where the facts required to be reported or in No duplication respect of which a press release is required to be filed under of reports sections 100 and 100a are identical, a report or press release is required only under the provision requiring the earlier report or press release, as the case may be.

100c.—(1) Where, on the application of an interested Applications person, it appears to the Commission that a person or company has not complied or is not complying with this Part or the regulations related to this Part, it may issue, subject to such terms and conditions as it may impose, an order,

- (a) restraining the distribution of any document used or issued in connection with a take-over bid or issuer bid:
- (b) requiring an amendment to or variation of any document used or issued in connection with a take-over bid or issuer bid and requiring the distribution of any amended, varied or corrected document; and
- directing any person or company to comply with (c) this Part or the regulations related to this Part or restraining any person or company from contravening this Part or the regulations related to this Part and directing the directors and senior officers of the person or company to cause the person or company to comply with or to cease contravening this Part or the regulations related to this Part.
- (2) Upon an application by any interested person, the Idem Commission may, subject to such terms and conditions as it may impose,
 - (a) decide for the purposes of subsection 96 (2) that an agreement, commitment or understanding with a selling security holder is made for reasons other than to increase the value of the consideration paid to the selling security holder for the securities of the selling security holder and that the agreement, commitment or understanding may be entered into notwithstanding that subsection;
 - (b) vary any time period set out in this Part and the regulations related to this Part; and

(c) exempt any person or company from any of the requirements of this Part or the regulations related to this Part where the Commission is satisfied that to do so would not be prejudicial to the public interest.

Applications to the High Court Idem

- **100d.**—(1) An interested person may apply to the High Court for an order under this section.
- (2) Where, on an application under subsection (1), the judge hearing the application is satisfied that a person or company has not complied with this Part or the regulations related to this Part, the judge may make such interim or final order as the judge thinks fit, including, without limiting the generality of the foregoing,
 - (a) an order compensating any interested person who is a party to the application for damages suffered as a result of a contravention of this Part or the regulations related to this Part;
 - (b) an order rescinding a transaction with any interested person, including the issue of a security or a purchase and sale of a security;
 - (c) an order requiring any person or company to dispose of any securities acquired pursuant to or in connection with a take-over bid or an issuer bid;
 - (d) an order prohibiting any person or company from exercising any or all of the voting rights attaching to any securities; and
 - (e) an order requiring the trial of an issue.

Transition

100e. This Part and section 129 and the regulations related thereto, as they read immediately before the coming into force of this section, shall continue to apply in respect of every take-over bid and issuer bid commenced before the coming into force of this section.

- **8.** Section 103 of the said Act is repealed.
- 9.—(1) Subsections 127 (1), (2), (3) and (4) of the said Act are repealed and the following substituted therefor:

Liability for misrepresentation in circular (1) Where a take-over bid circular sent to the security holders of an offeree issuer as required by Part XIX or any notice of change or variation in respect thereof contains a misrepresentation, every such security holder shall be deemed to have

relied on the misrepresentation and may elect to exercise a right of action for rescission or damages against the offeror or a right of action for damages against,

- (a) every person who at the time the circular or notice, as the case may be, was signed was a director of the offeror;
- (b) every person or company whose consent in respect of the circular or notice, as the case may be, has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by the person or company; and
- (c) each person who signed a certificate in the circular or notice, as the case may be, other than the persons included in clause (a).
- (2) Where a directors' circular or a director's or officer's Idem circular delivered to the security holders of an offeree issuer as required by Part XIX or any notice of change or variation in respect thereof contains a misrepresentation, every such security holder shall be deemed to have relied on the misrepresentation and has a right of action for damages against every director or officer who signed the circular or notice that contained the misrepresentation.

(3) Subsection (1) applies with necessary modifications ^{Idem} where an issuer bid circular or any notice of change or variation in respect thereof contains a misrepresentation.

(4) No person or company is liable under subsection (1), Defence (2) or (3) if the person or company proves that the security holder had knowledge of the misrepresentation.

(2) Subsections 127 (10) and (11) of the said Act are repealed and the following substituted therefor:

(10) Where the offeror,

Deemed take-over bid circular or issuer bid circular

- (a) in a take-over bid exempted from the provisions of or issuer bid Part XIX by clause 92 (1) (a); or
- (b) in an issuer bid exempted from the provisions of Part XIX by clause 92 (3) (e),

is required, by the by-laws, regulations or policies of the stock exchange through the facilities of which the take-over bid or issuer bid is made, to file with it or to deliver to security holders of the offeree issuer a disclosure document, the disclosure document shall be deemed, for the purposes of this section, to be a take-over bid circular or issuer bid circular, as the case may be, delivered to the security holders as required by Part XIX.

No derogation of rights

- (11) The right of action for rescission or damages conferred by this section is in addition to and without derogation from any other right the security holders of the offeree issuer may have at law.
 - 10. Section 129 of the said Act is repealed.
- 11. Section 130 of the said Act is repealed and the following substituted therefor:

Liability of dealer or offeror

- 130. A purchaser of a security to whom a prospectus was required to be sent or delivered but was not sent or delivered in compliance with subsection 70 (1) or a security holder to whom a take-over bid and take-over bid circular or an issuer bid and an issuer bid circular, or any notice of change or variation to any such bid or circular, were required to be delivered but were not delivered in compliance with section 94 or section 97 has a right of action for rescission or damages against the dealer or offeror who failed to comply with the applicable requirement.
- **12.**—(1) Section 139 of the said Act is amended by adding thereto the following paragraph:
 - 18a. prescribing terms and conditions upon which a person or company may be designated as a recognized clearing agency.
- (2) Paragraphs 32 and 33 of the said section 139 are repealed and the following substituted therefor:
 - 32. respecting any other matter necessary or advisable to carry out effectively the intent and purpose of Parts XIX and XX, including, without restricting the generality of the foregoing, providing for exemptions in addition to those set out in subsections 92 (1) and (3), providing for exemptions from section 93, restricting any exemption set out in subsection 92 (1) or (3) or section 93, prescribing rules in addition to those set out in section 94 and varying any rule set out in that section and prescribing the form and content of any circular, report or other document required to be delivered or filed.

- 13. This Act comes into force on a day to be named by Commence-proclamation of the Lieutenant Governor.
- 14. The short title of this Act is the Securities Amendment Short title Act, 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

36 ELIZABETH II, 1987

Bill 156

An Act to amend the Securities Act

The Hon. M. Kwinter

Minister of Financial Institutions

1st Reading

November 24th, 1986

2nd Reading

February 4th, 1987

3rd Reading

Royal Assent

(Reprinted as amended by the Committee of the Whole House)

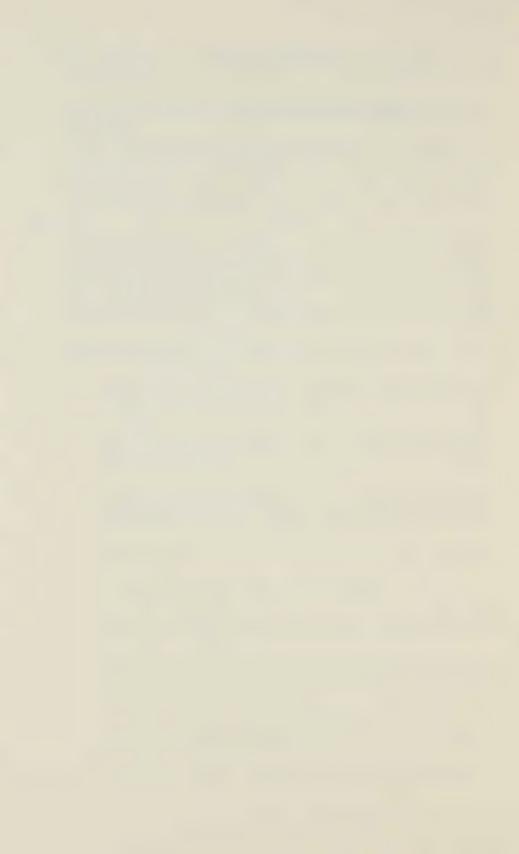
EXPLANATORY NOTES

The principal purposes of the Bill are as follows:

- 1. Under section 2, the Lieutenant Governor in Council will be authorized to appoint up to two additional persons as members of the Commission and to designate an additional Vice-Chairman.
- 2. Under the *Business Corporations Act*, 1982, provision is made for the clearing of securities through the facilities of a clearing agency recognized by the Commission. The proposed clause 18 (1) (a), section 21a and paragraph 18a of section 139 of the Act, as set out in sections 3, 4 and 15 of the Bill, provide for a regulatory framework with respect to the recognition of such clearing agencies. The new definitions set out in section 1 of the Bill are complementary to the provisions related to clearing agencies.
- 3. The proposed re-enactment of section 75, as set out in section 7 of the Bill, provides for new restrictions related to insider trading and tipping. Among the significant features of the changes in this section are prohibitions against trading by tippees and an expanded definition of the persons and companies who are subject to the insider trading and tipping prohibitions. Under the amendments to section 118 of the Act, as set out in section 10, the maximum fine for a contravention of the Act is increased to \$1,000,000. Higher fines may be imposed if the conviction relates to insider trading or tipping. Complementary amendments to the Act are set out in section 14 and subsection 15 (2) of the Bill.
- 4. Under section 8, Part XIX of the Act is re-enacted. Part XIX relates to take-over bids and issuer bids. Among the significant changes are the following:
 - 1. The requirement for follow-up offers as set out in the present subsection 91 (1) of the Act is replaced by new restrictions on the availability of the private agreement exemption. (Proposed clause 92 (1) (c))
 - 2. An early warning system is established whereby, when an offeror's holdings in any class of voting or non-voting participating securities of an issuer reaches 10 per cent, the offeror will be required to make public disclosure of the fact. (Proposed section 100)
 - 3. Provision is made for the integration with the bid of acquisitions made through private transactions during the ninety day period preceding a take-over bid so that offerees under the bid will receive consideration equal to the consideration paid in the private transactions. (Proposed subsection 93 (4))
 - 4. An offeror and those acting jointly or in concert with an offeror will be treated as one offeror.
 - 5. Restrictions on conditions in take-over bids are removed.
 - 6. The take-over bid and issuer bid requirements in the proposed sections 94 to 99 will be made applicable to voluntary acquisitions of non-voting participating securities.
 - 7. Take-over bids and issuer bids that are made in jurisdictions with acceptable rules related to bids and that have slight connection with Ontario will be exempted from the take-over bid and issuer bid requirements of the Act. (Proposed clauses 92 (1) (e) and 92 (3) (h))
 - 8. Restrictions will apply to acquisitions of securities that were subject to a takeover bid or an issuer bid for a period of twenty days following the expiry of the bid. (Proposed subsection 93 (6))
 - 9. Amendments are made to the rules governing take-over bids and issuer bids.

- Under the proposed section 100e, the existing Part XIX will continue to apply in respect of take-over bids and issuer bids commenced before the new Part XIX comes into force.
- 11. New remedial powers are conferred on the Commission and on the High Court. (Proposed sections 100c and 100d)

The amendments to the Act set out in sections 5, 6, 9, 11, 12 and 13 and subsection 15 (1) of the Bill are complementary to the enactment of the new Part XIX of the Act.



Bill 156 1987

An Act to amend the Securities Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- **1.** Subsection 1 (1) of the *Securities Act*, being chapter 466 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following paragraphs:
 - 2a. "clearing agency" means a person or company that acts as an intermediary in paying funds or delivering securities, or both, in connection with trades in securities and that provides centralized facilities for the clearing of trades in securities;
 - 34a. "recognized clearing agency" means a person or company that is designated as a recognized clearing agency by the Commission.
- **2.** Subsection 2 (2) of the said Act is repealed and the following substituted therefor:
- (2) The Commission shall be composed of a Chairman and Appointments not more than ten or less than eight other members, appointed by the Lieutenant Governor in Council, two of whom may be designated as Vice-Chairmen.
- **3.** Clause 18 (1) (a) of the said Act is repealed and the following substituted therefor:
 - (a) the financial affairs of a recognized clearing agency, registrant or reporting issuer; and
- 4. The said Act is amended by adding thereto the following Part:

PART VIII-A

CLEARING AGENCIES

Recognition of clearing agencies

21a.—(1) Upon the application of a person or company carrying on or proposing to carry on the business of a clearing agency, the Commission may designate the person or company as a recognized clearing agency where the Commission is satisfied that to do so would be in the public interest and that the person or company can comply with the regulations and all terms and conditions imposed by the Commission with respect to the designation.

Commission's powers

(2) The Commission, in designating a person or company as a recognized clearing agency, shall make the designation in writing and the designation may be made subject to such terms and conditions as the Commission may impose.

Idem

(3) The Commission, after giving a recognized clearing agency an opportunity to be heard, may suspend or cancel its designation as a recognized clearing agency or may impose terms and conditions upon the designation where in its opinion such action is in the public interest.

Idem

(4) The Commission, where it appears to it to be in the public interest, may make any decision with respect to any constating document, general agreement with its participants or members, by-law, rule, regulation, procedure or practice of a recognized clearing agency, including, without limiting the generality of the foregoing, suspending the operation of or requiring an amendment to any such constating document, general agreement, by-law, rule, regulation, procedure or practice.

Review of decisions of recognized clearing agency

- (5) Any person or company directly affected by any direction, order or decision made under any by-law, rule, regulation, procedure or practice of a recognized clearing agency may apply to the Commission for a hearing and review thereof and section 8 applies to the hearing and review in the same manner as to the hearing and review of a decision of the Director.
- 5. Paragraph 17 of subsection 34 (1) of the said Act is repealed and the following substituted therefor:
 - 17. A trade in a security to a person or company pursuant to a take-over bid or issuer bid made by that person or company.

- 6. Clause 71 (1) (k) of the said Act is repealed and the following substituted therefor:
 - (k) the trade is made in a security to a person or company pursuant to a take-over bid or issuer bid made by that person or company.
- 7. Section 75 of the said Act is repealed and the following substituted therefor:
- **75.**—(1) No person or company in a special relationship Trading where with a reporting issuer shall purchase or sell securities of the undisclosed reporting issuer with the knowledge of a material fact or change material change with respect to the reporting issuer that has not been generally disclosed.

(2) No reporting issuer and no person or company in a spe-Tipping cial relationship with a reporting issuer shall inform, other than in the necessary course of business, another person or company of a material fact or material change with respect to the reporting issuer before the material fact or material change has been generally disclosed.

(3) No person or company that proposes,

Idem

- (a) to make a take-over bid, as defined in Part XIX, for the securities of a reporting issuer;
- (b) to become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with a reporting issuer; or
- (c) to acquire a substantial portion of the property of a reporting issuer,

shall inform another person or company of a material fact or material change with respect to the reporting issuer before the material fact or material change has been generally disclosed except where the information is given in the necessary course of business to effect the take-over bid, business combination or acquisition.

(4) No person or company shall be found to have contra- Defence vened subsection (1), (2) or (3) if the person or company proves that the person or company reasonably believed that the material fact or material change had been generally disclosed.

(5) For the purposes of this section, "person or company in Definition a special relationship with a reporting issuer" means,

- (a) a person or company that is an insider, affiliate or associate of.
 - (i) the reporting issuer,
 - (ii) a person or company that is proposing to make a take-over bid, as defined in Part XIX, for the securities of the reporting issuer, or
 - (iii) a person or company that is proposing to become a party to a reorganization, amalgamation, merger or arrangement or similar business combination with the reporting issuer or to acquire a substantial portion of its property;
- (b) a person or company that is engaging in or proposes to engage in any business or professional activity with or on behalf of the reporting issuer or with or on behalf of a person or company described in subclause (a) (ii) or (iii);
- (c) a person who is a director, officer or employee of the reporting issuer or of a person or company described in subclause (a) (ii) or (iii) or clause (b);
- (d) a person or company that learned of the material fact or material change with respect to the reporting issuer while the person or company was a person or company described in clause (a), (b) or (c);
- (e) a person or company that learns of a material fact or material change with respect to the issuer from any other person or company described in this subsection, including a person or company described in this clause, and knows or ought reasonably to have known that the other person or company is a person or company in such a relationship.

Idem

- (6) For the purpose of subsection (1), a security of the reporting issuer shall be deemed to include,
 - (a) a put, call, option or other right or obligation to purchase or sell securities of the reporting issuer; or
 - (b) a security, the market price of which varies materially with the market price of the securities of the issuer.

8. Part XIX of the said Act is repealed and the following substituted therefor:

PART XIX

TAKE-OVER BIDS AND ISSUER BIDS

88.—(1) In this Part,

Definitions

"business day" means a day other than a Saturday or a holiday;

"class of securities" includes a series of a class of securities;

"equity security" means any security of an issuer that carries a residual right to participate in the earnings of the issuer and, upon the liquidation or winding up of the issuer, in its assets;

"formal bid" means.

- (a) a take-over bid or an issuer bid to which section 94 applies, or
- (b) a take-over bid that is exempted from sections 94 to 99 or an issuer bid that is exempted from sections 94, 95, 96, 97 and 99,
 - (i) by reason of an exemption under clause 92 (1) (a) or 92 (3) (e), if the offeror is required to deliver to every security holder whose last address as shown on the books of the offeree issuer is in Ontario a disclosure document of the type contemplated by subsection 127 (10), or
 - (ii) by reason of an exemption under clause 92 (1) (e) or 92 (3) (h), if the offeror is required to deliver disclosure material relating to the bid to holders of the class of securities subject to the bid;

"interested person" means, for the purposes of sections 100c and 100d,

- (a) an offeree issuer,
- (b) a security holder, director or officer of an offeree issuer,

- (c) an offeror,
- (d) the Director, and
- (e) any person or company not referred to in clauses (a) to (d) who in the opinion of the Commission or the Court, as the case may be, is a proper person to make an application under section 100c or 100d, as the case may be;

"issuer bid" means an offer to acquire or redeem securities of an issuer made by the issuer to any person or company who is in Ontario or to any security holder of the issuer whose last address as shown on the books of the issuer is in Ontario and includes a purchase, redemption or other acquisition of securities of the issuer by the issuer from any such person or company, but does not include an offer to acquire or redeem debt securities that are not convertible into securities other than debt securities;

"offer to acquire" includes,

- (a) an offer to purchase, or a solicitation of an offer to sell, securities,
- (b) an acceptance of an offer to sell securities, whether or not such offer to sell has been solicited,

or any combination thereof, and the person or company accepting an offer to sell shall be deemed to be making an offer to acquire to the person or company that made the offer to sell;

- "offeree issuer" means an issuer whose securities are the subject of a take-over bid, an issuer bid or an offer to acquire;
- "offeror" means a person or company who makes a take-over bid, an issuer bid or an offer to acquire and, for the purposes of section 100, includes a person or company who acquires a security, whether or not by way of a take-over bid, issuer bid or offer to acquire;
- "offeror's securities" means securities of an offeree issuer beneficially owned, or over which control or direction is exercised, on the date of an offer to acquire, by an offeror or any person or company acting jointly or in concert with the offeror;
- "published market" means, as to any class of securities, any market on which such securities are traded if the prices at

which they have been traded on that market are regularly published in a *bona fide* newspaper or business or financial publication of general and regular paid circulation;

"take-over bid" means an offer to acquire outstanding voting or equity securities of a class made to any person or company who is in Ontario or to any security holder of the offeree issuer whose last address as shown on the books of the offeree issuer is in Ontario, where the securities subject to the offer to acquire, together with the offeror's securities, constitute in the aggregate 20 per cent or more of the outstanding securities of that class of securities at the date of the offer to acquire.

(2) For the purposes of this Part,

Computation of time, expiry

- (a) a period of days shall be computed as commencing of bid on the day next following the event which began the period and terminating at midnight on the last day of the period, except that if the last day of the period does not fall on a business day, the period terminates at midnight on the next business day; and
- (b) a take-over bid or an issuer bid expires at the later of.
 - (i) the end of the period, including any extension, during which securities may be deposited pursuant to the bid, and
 - (ii) the time at which the offeror becomes obligated by the terms of the bid to take-up or reject securities deposited thereunder.

(3) For the purposes of this Part,

Convertible securities

- (a) a security shall be deemed to be convertible into a security of another class if, whether or not on conditions, it is or may be convertible into or exchangeable for, or if it carries the right or obligation to acquire, a security of the other class, whether of the same or another issuer; and
- (b) a security that is convertible into a security of another class shall be deemed to be convertible into a security or securities of each class into which the second-mentioned security may be converted, either directly or through securities of one or more other classes of securities that are themselves convertible.

Deemed beneficial ownership **89.**—(1) For the purposes of this Part, in determining the beneficial ownership of securities of an offeror or of any person or company acting jointly or in concert with the offeror, at any given date, the offeror, person or company shall be deemed to have acquired and be the beneficial owner of a security, including an unissued security, if the offeror, person or company is the beneficial owner of any security convertible within sixty days following such date into such a security or has the right or obligation, whether or not on conditions, to acquire within such sixty days beneficial ownership of the security whether through the exercise of an option, warrant, right or subscription privilege or otherwise.

Calculation of holdings, joint offers (2) Where two or more offerors acting jointly or in concert make one or more offers to acquire securities of a class, the securities subject to any such offer or offers to acquire shall be deemed to be securities subject to the offer to acquire of each such offeror for the purpose of determining whether any such offeror is making a take-over bid.

Unissued securities deemed outstanding (3) Where an offeror or any person or company acting jointly or in concert with the offeror is deemed by reason of subsection (1) to be the beneficial owner of unissued securities, the securities shall be deemed to be outstanding for the purpose of calculating the number of outstanding securities of that class in respect of that offeror's offer to acquire.

Acting jointly or in concert

- **90.**—(1) For the purposes of this Part, it is a question of fact as to whether a person or company is acting jointly or in concert with an offeror and, without limiting the generality of the foregoing, the following shall be presumed to be acting jointly or in concert with an offeror:
 - 1. Every person or company who, as a result of any agreement, commitment or understanding, whether formal or informal, with the offeror or with any other person or company acting jointly or in concert with the offeror, acquires or offers to acquire securities of the issuer of the same class as those subject to the offer to acquire.
 - 2. Every person or company who, as a result of any agreement, commitment or understanding, whether formal or informal, with the offeror or with any other person or company acting jointly or in concert with the offeror, intends to exercise jointly or in concert with the offeror or with any other person or company acting jointly or in concert with the offeror any voting rights attaching to any securities of the offeree issuer.

- 3. Every associate or affiliate of the offeror.
- (2) Notwithstanding subsection (1), a registered dealer act- Limitation ing solely in an agency capacity for the offeror in connection with a take-over bid or an issuer bid and not executing principal transactions for its own account in the class of securities subject to the offer to acquire or performing services beyond customary dealer's functions shall not be presumed solely by reason of such agency relationship to be acting jointly or in concert with the offeror in connection with the bid.

91. For the purposes of this Part, a reference to an offer Application to acquire or to the acquisition or ownership of securities or to direct and control or direction over securities shall be construed to indirect include a direct or indirect offer to acquire or the direct or etc. indirect acquisition or ownership of securities, or the direct or indirect control or direction over securities, as the case may be.

92.—(1) Subject to the regulations, a take-over bid is Exempted exempt from sections 94 to 99 if,

take-over

- (a) the bid is made through the facilities of a stock exchange recognized by the Commission for the purposes of this clause;
- the bid is for not more than 5 per cent of the outstanding securities of a class of securities of the issuer and.
 - (i) the aggregate number of securities acquired by the offeror and any person or company acting jointly or in concert with the offeror within any period of twelve months in reliance upon the exemption provided by this clause does not, when aggregated with acquisitions otherwise made by the offeror and any person or company acting jointly or in concert with the offeror within the same twelve month period, constitute in excess of 5 per cent of the outstanding securities of that class of the issuer at the commencement of the twelve month period, and
 - (ii) if there is a published market for the securities acquired, the value of the consideration paid for any of the securities acquired is not in excess of the market price at the date of acquisition determined in accordance with the

regulations plus reasonable brokerage fees or commissions actually paid;

- (c) all of the following conditions apply,
 - (i) purchases are made from not more than five persons or companies in the aggregate, including persons or companies outside of Ontario,
 - (ii) the bid is not made generally to security holders of the class of securities that is the subject of the bid, and
 - (iii) the value of the consideration paid for any of the securities, including brokerage fees or commissions, does not exceed 115 per cent of the market price of securities of that class at the date of the bid determined in accordance with the regulations;
- (d) the offeree issuer is not a reporting issuer, there is not a published market in respect of the securities that are the subject of the bid, and the number of holders of securities of that class is not more than fifty, exclusive of holders who are in the employment of the offeree issuer or an affiliate of the offeree issuer, and exclusive of holders who were formerly in the employment of the offeree issuer or an affiliate of the offeree issuer and who while in that employment were, and have continued after that employment to be, security holders of the offeree issuer:
- (e) the number of holders, whose last address as shown on the books of the offeree issuer is in Ontario, of securities of the class subject to the bid is fewer than fifty and the securities held by such holders constitute, in the aggregate, less than 2 per cent of the outstanding securities of that class, the bid is made in compliance with the laws of a jurisdiction that is recognized for the purposes of this clause by the Commission, and all material relating to the bid that is sent by the offeror to holders of securities of the class that is subject to the bid is concurrently sent to all holders of such securities whose last address as shown on the books of the offeree issuer is in Ontario and filed; or
- (f) it is exempted by the regulations.

(2) For the purposes of clause (1) (c), where an offeror Determimakes an offer to acquire securities from a person or company of number of and the offeror knows or ought to know after reasonable security enquiry that,

SECURITIES

- one or more other persons or companies on whose (a) behalf that person or company is acting as nominee, agent, trustee, executor, administrator or other legal representative has a direct beneficial interest in those securities, then each of such others shall be included in the determination of the number of persons and companies to whom the offer to acquire has been made, but, where an inter vivos trust has been established by a single settlor or where an estate has not vested in all persons beneficially entitled thereto, the trust or estate shall be considered a single security holder in such determination; or
- (b) the person or company acquired the securities in order that the offeror might make use of the exemption provided by clause (1) (c), then each person or company from whom those securities were acquired shall be included in the determination of the number of persons and companies to whom the offer to acquire has been made.
- (3) Subject to the regulations, an issuer bid is exempt from Exempted sections 94, 95, 96, 97 and 99 if,

- (a) the securities are purchased, redeemed or otherwise acquired in accordance with terms and conditions attaching thereto that permit the purchase, redemption or acquisition of the securities by the issuer without the prior agreement of the owners of the securities, or where the securities are acquired to meet sinking fund or purchase fund requirements;
- (b) the purchase, redemption or other acquisition is required by the instrument creating or governing the class of securities or by the statute under which the issuer was incorporated, organized or continued:
- (c) the securities carry with them or are accompanied by a right of the owner of the securities to require the issuer to redeem or repurchase the securities and the securities are acquired pursuant to the exercise of such right;

- (d) the securities are acquired from a current or former employee of the issuer or of an affiliate of the issuer, and if there is a published market in respect of the securities.
 - (i) the value of the consideration paid for any of the securities acquired does not exceed the market price of the securities at the date of the acquisition determined in accordance with the regulations, and
 - (ii) the aggregate number or, in the case of convertible debt securities, the aggregate principal amount of securities acquired by the issuer within a period of twelve months in reliance on the exemption provided by this clause does not exceed 5 per cent of the securities of that class issued and outstanding at the commencement of the period;
- (e) the bid is made through the facilities of a stock exchange recognized by the Commission for the purpose of this clause;
- (f) following the publication of a notice of intention in the form and manner prescribed by the regulations, the issuer purchases securities in the normal course in the open market, including through the facilities of a stock exchange, if the aggregate number, or, in the case of convertible debt securities, the aggregate principal amount, of securities acquired by the issuer within a period of twelve months in reliance on the exemption provided by this clause does not exceed 5 per cent of the securities of that class issued and outstanding at the commencement of the period;
- (g) the issuer is not a reporting issuer, there is not a published market in respect of the securities that are the subject of the bid and the number of holders of securities of the issuer is not more than fifty, exclusive of holders who are in the employment of the issuer or an affiliate of the issuer, and exclusive of holders who were formerly in the employment of the issuer or an affiliate of the issuer and who while in that employment were, and have continued after the employment to be, security holders of the issuer;

13

(h) the number of holders, whose last address as shown on the books of the issuer is in Ontario, of securities of the class subject to the bid is fewer than fifty and the securities held by such holders constitute, in the aggregate, less than 2 per cent of the outstanding securities of that class, the bid is made in compliance with the laws of a jurisdiction that is recognized for the purposes of this clause by the Commission, and all material relating to the bid that is sent by the offeror to holders of securities of the class that is subject to the bid is concurrently sent to all holders of such securities whose last address as shown on the books of the issuer is in Ontario and filed; or

SECURITIES

- (i) it is exempted by the regulations.
- (4) A bid that is made in reliance upon any exemption in Stock this section through the facilities of a stock exchange shall be requirements made in accordance with the by-laws, regulations and policies of the exchange.

93.—(1) In this section, "offeror" means,

Definition

- (a) an offeror making a formal bid other than a bid referred to in clause 92 (1) (e) or 92 (3) (h);
- (b) a person or company acting jointly or in concert with an offeror referred to in clause (a);
- (c) a security holder of an offeror referred to in clause (a) who, as regards the offeror, is a person or company or a member of a combination of persons or companies referred to in subparagraph iii of paragraph 11 of subsection 1 (1) or an associate or affiliate of such security holder.

(2) An offeror shall not offer to acquire or make, or enter Restrictions into, any agreement, commitment or understanding to acquire acquisitions beneficial ownership of any securities of the class that are sub-during iect to a take-over bid otherwise than pursuant to the bid on bid and from the day of the announcement of the offeror's intention to make the bid until its expiry.

(3) Notwithstanding subsection (2), an offeror making a Permitted take-over bid may purchase, through the facilities of a stock during exchange recognized by the Commission for the purpose of take-over bid clause 92 (1) (a), securities of the class that are subject to the bid and securities convertible into securities of that class com-

SECURITIES

- (a) the intention to make such purchases is stated in the take-over bid circular:
- (b) the aggregate number of securities acquired under this subsection does not constitute in excess of 5 per cent of the outstanding securities of that class as at the date of the bid; and
- (c) the offeror issues and files a press release forthwith after the close of business of the exchange on each day on which securities have been purchased under this subsection disclosing the information prescribed by the regulations.

Restrictions on acquisition during issuer bid (4) An offeror making an issuer bid shall not offer to acquire, or make or enter into any agreement, commitment or understanding to acquire, beneficial ownership of any securities of the class that are subject to the bid otherwise than pursuant to the bid on and from the day of the announcement of the offeror's intention to make the bid until the bid's expiry, but this subsection does not apply so as to prevent the offeror from purchasing, redeeming or otherwise acquiring any such securities during such period in reliance on an exemption under clause 92 (3) (a), (b) or (c).

Integration with pre-bid private transactions

- (5) Where a take-over bid that is a formal bid is made by an offeror and, within the period of ninety days immediately preceding the bid, the offeror acquired beneficial ownership of securities of the class subject to the bid pursuant to a transaction not generally available on identical terms to holders of that class of securities.
 - (a) the offeror shall offer consideration for securities deposited under the bid at least equal to the highest consideration that was paid on a per security basis under any of such prior transactions or the offeror shall offer at least the cash equivalent of such consideration; and
 - (b) the offeror shall offer to acquire under the bid that percentage of securities of the class subject to the bid that is at least equal to the highest percentage that the number of securities acquired from a seller in such a prior transaction was of the total number of securities of that class beneficially owned by such seller at the time of the prior transaction.

(6) An offeror shall not acquire beneficial ownership of Restriction securities of the class that was subject to the bid by way of a post-bid transaction that is not generally available on identical terms to acquisition holders of that class of securities during the period beginning with the expiry of the bid and ending at the end of the twentieth business day thereafter, and whether or not any securities are taken up under the bid.

SECURITIES

(7) Subsections (5) and (6) do not apply to trades effected Exceptions, in the normal course on a published market, so long as,

trades

- any broker acting for the purchaser or seller does not perform services beyond the customary broker's function and does not receive more than reasonable fees or commissions:
- (b) the purchaser or any person or company acting for the purchaser does not solicit or arrange for the solicitation of offers to sell securities of the class subiect to the bid: and
- (c) the seller or any person or company acting for the seller does not solicit or arrange for the solicitation of offers to buy securities of the class subject to the bid.
- (8) An offeror shall not, except pursuant to the bid, sell or Sales during bid make or enter into any agreement, commitment or under-prohibited standing to sell any securities of the class subject to the bid on and from the day of the announcement of the offeror's intention to make the bid until its expiry.

(9) Notwithstanding subsection (8), an offeror, before the Exception expiry of a bid, may make or enter into an arrangement, commitment or understanding to sell securities that may be taken up by the offeror pursuant to a bid, after the expiry of the bid, if the intention to sell is disclosed in the take-over bid circular or issuer bid circular, as the case may be.

94. Subject to the regulations, the following rules apply to General every take-over bid and issuer bid:

of bid

The bid shall be made to all holders of securities of Delivery the class that is subject to the bid who are in Ontario, and delivered by the offeror to all holders, whose last address as shown on the books of the offeree issuer is in Ontario, of securities of that class and of securities that, before the expiry of the bid, are convertible into securities of that class.

Minimum deposit period

2. The offeror shall allow at least twenty-one days from the date of the bid during which securities may be deposited pursuant to the bid.

SECURITIES

When taking up prohibited

No securities deposited pursuant to the bid shall be 3. taken up by the offeror until the expiration of twenty-one days from the date of the bid.

Withdrawal

- Securities deposited pursuant to the bid may be 4. withdrawn by or on behalf of a depositing security holder.
 - i. at any time before the expiration of twentyone days from the date of the bid,
 - ii. at any time before the expiration of ten days from the date of a notice of change or variation under section 97, and
 - iii. where the securities have not been taken up and paid for by the offeror, after forty-five days from the date of the bid.

Exception

- The right of withdrawal conferred by subparagraph 5. ii of paragraph 4 does not apply,
 - i. where the securities have been taken up by the offeror at the date of the notice.
 - ii. where a variation in the terms of a bid consists solely of an increase in the consideration offered for the securities subject to the bid and the time for deposit is not extended for a period greater than that required by subsection 97 (5), or
 - iii. in the circumstances described in subsection 97 (6).

Notice of withdrawal

Notice of withdrawal of any securities under para-6. graph 4 shall be made by or on behalf of the depositing security holder by a method that provides the depositary designated under the bid with a written or printed copy and, to be effective, the notice must be actually received by the depositary and, where notice is given in accordance with this paragraph, the offeror shall return the securities to the depositing security holder.

7. Where the bid is made for less than all of the class Pro rata of securities subject to the bid and where a greater number of securities is deposited pursuant thereto than the offeror is bound or willing to acquire under the bid, the securities shall be taken up and paid for by the offeror, as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each depositing security holder.

Where an offeror purchases securities as permitted Effect of 8. by subsection 93 (3), the securities so purchased purchases shall be counted in the determination of whether a condition as to the minimum number of securities to be deposited in the bid has been fulfilled, but shall not reduce the number of securities the offeror is bound under the bid to take up.

9. Subject to paragraphs 10 and 11, the offeror shall take up and pay for securities deposited under the must be bid, where all the terms and conditions of the bid taken up have been complied with or waived, not later than ten days after the expiry of the bid.

When securities and paid for

10. Any securities that are taken up by the offeror Idem under the bid shall be paid for by the offeror as soon as possible, and in any event not more than three days, after the taking up of the securities.

11. Any securities deposited pursuant to the bid subse-Idem quent to the date on which the offeror first takes up securities deposited under the bid shall be taken up and paid for by the offeror within ten days of the deposit of the securities.

12. A bid may not be extended by the offeror, where Extension all the terms and conditions thereof have been complied with except those waived by the offeror, unless the offeror first takes up and pays for all securities deposited thereunder and not withdrawn.

13. Where all the terms and conditions of the bid have Press release been complied with or waived, the offeror shall forthwith issue a notice by press release to that effect, which press release shall disclose the approximate number of securities deposited and the approximate number that will be taken up.

95. Where a take-over bid or issuer bid provides that the Financing of consideration for the securities deposited pursuant to the bid is to be paid in cash or partly in cash, the offeror shall make

adequate arrangements prior to the bid to ensure that the required funds are available to effect payment in full for all securities that the offeror has offered to acquire.

Identical consideration

96.—(1) Subject to the regulations, where a take-over bid or issuer bid is made, all holders of the same class of securities shall be offered identical consideration.

Collateral benefit

(2) If an offeror makes or intends to make a take-over bid or issuer bid, neither the offeror nor any person or company acting jointly or in concert with the offeror shall enter into any collateral agreement, commitment or understanding with any holder or beneficial owner of securities of the offeree issuer that has the effect of providing to the holder or owner a consideration of greater value than that offered to the other holders of the same class of securities.

Increasing consideration

(3) Where a variation in the terms of a take-over bid or issuer bid before the expiry of the bid increases the value of the consideration offered for the securities subject to the bid, the offeror shall pay such increased consideration to each person or company whose securities are taken up pursuant to the bid, whether or not such securities were taken up by the offeror before the variation.

Offeror's circular

97.—(1) An offeror shall deliver, with or as part of a take-over bid or issuer bid, a take-over bid circular or issuer bid circular, as the case may be.

Notice of change in information

(2) Where, before the expiry of a take-over bid or issuer bid or after the expiry of the bid but before the expiry of all rights to withdraw the relevant securities, a change has occurred in the information contained in a take-over bid circular or issuer bid circular or in any notice of change or notice of variation that would reasonably be expected to affect the decision of the holders of the securities of the offeree issuer to accept or reject the bid, a notice of the change shall be delivered to every person or company to whom the circular was required to be delivered and whose securities were not taken up at the date of the occurrence of the change.

Idem

(3) Subsection (2) does not apply to a change that is not within the control of the offeror or of an affiliate of the offeror unless it is a change in a material fact relating to the securities being offered in exchange for securities of the offeree issuer.

Variation in terms of bid (4) Where there is a variation in the terms of a take-over bid or issuer bid, including any extension of the period during which securities may be deposited thereunder and whether or

not the variation results from the exercise of any right contained in the bid, a notice of the variation shall be delivered to every person or company to whom the take-over bid circular or issuer bid circular was required to be delivered and whose securities were not taken up at the date of the variation

(5) Subject to subsection (6), where there is a variation in Idem the terms of a take-over bid or issuer bid, the period during which securities may be deposited pursuant to the bid shall not expire before ten days after the notice of variation has been delivered.

10

(6) Subsection (5) does not apply to a variation in the terms Idem of a bid consisting solely of the waiver of a condition in the bid where the consideration offered for the securities that are subject to the bid consists solely of cash.

(7) A take-over bid circular, issuer bid circular, notice of Content change and notice of variation shall be in the form and shall contain the information required by this Part and the regulations.

98.—(1) Where a take-over bid has been made, a direc-Directors' tors' circular shall be prepared and delivered by the board of directors of an offeree issuer to every person and company to whom a take-over bid must be delivered under paragraph 1 of section 94, not later than ten days after the date of the bid.

(2) The board of directors shall include in a directors' circu-Recommenlar either a recommendation to accept or to reject a take-over board bid and the reasons for their recommendation, or a statement that they are unable to make or are not making a recommendation and if no recommendation is made, the reasons for not making a recommendation.

(3) An individual director or officer may recommend Individual acceptance or rejection of a take-over bid if the director or director's officer delivers with the recommendation a circular prepared circular in accordance with the regulations.

(4) Where a board of directors is considering recommend- Advising of ing acceptance or rejection of a take-over bid, it shall, at the time of sending or delivering a directors' circular, advise the security holders of this fact and may advise them not to tender their securities until further communication is received from the directors.

consideration

(5) Where subsection (4) applies, the board of directors Advising of shall deliver the recommendation or the decision not to make decision of directors

a recommendation at least seven days before the scheduled expiry of the period during which securities may be deposited under the bid.

Notice of change

- (6) Where, before the expiry of a take-over bid or after the expiry of the bid but before the expiry of all rights to withdraw the securities that have been deposited under the bid,
 - (a) a change has occurred in the information contained in a directors' circular or in any notice of change to a directors' circular that would reasonably be expected to affect the decision of the holders of the securities to accept or reject the bid, the board of directors of the offeree issuer shall forthwith deliver a notice of the change to every person or company to whom the circular was required to be sent disclosing the nature and substance of the change; or
 - (b) a change has occurred in the information contained in an individual director's or officer's circular or any notice of change thereto that would reasonably be expected to affect the decision of the holders of the securities to accept or reject the bid, other than a change that is not within the control of the individual director or officer, as the case may be, the individual director or officer, as the case may be, shall forthwith deliver a notice of change in relation thereto to the board of directors.

Circulation of individual circulars and notices

(7) Where an individual director or officer submits a circular under subsection (3) or a notice of change under clause (6) (b) to the board of directors, the board, at the offeree issuer's expense, shall deliver a copy of the circular or notice to the persons and companies referred to in subsection (1).

Content

(8) A directors' circular, director's or officer's circular and a notice of change shall be in the form and contain the information required by this Part and the regulations.

Delivery to offeree issuer

99.—(1) A take-over bid and any notice of change or variation shall be filed and shall be delivered to the offeree issuer at its principal office and an issuer bid and any notice of change or variation shall be filed on the day such bid or notice is delivered to holders of securities of the offeree issuer, or as soon as practicable thereafter.

Delivery to offeree issuer and Commission (2) Every directors' circular and every individual director's or officer's circular or any notice of change in relation thereto that is delivered to security holders of an offeree issuer shall be filed and shall be delivered to the offeror at its principal

office on the day the directors' circular or individual director's or officer's circular or the notice of change is delivered to the holders of securities of the offeree issuer, or as soon as practicable thereafter

SECURITIES

(3) A take-over bid or issuer bid, a take-over bid circular, Delivery and date of bid. an issuer bid circular, a directors' circular, an individual director's or officer's circular and every notice of change or variation in any such bid or circular shall be mailed by prepaid first class mail or delivered by personal delivery or in such other manner as the Director may approve to the intended recipient and any bid, circular or notice so mailed or delivered shall be deemed to have been delivered and such bid, circular or notice shall be deemed conclusively for the purposes of sections 94, 97 and 98 and this section to have been dated as of the date on which it was so mailed or delivered to all or substantially all of the persons and companies entitled to receive it.

21

100.—(1) Every offeror that acquires beneficial ownership Securities. of, or the power to exercise control or direction over, or securities convertible into, voting or equity securities of any class of a reporting issuer that, together with such offeror's securities of that class, would constitute 10 per cent or more of the outstanding securities of that class,

- shall issue and file forthwith a press release containing the information prescribed by the regulations; and
- (b) within two business days, shall file a report containing the same information as is contained in the press release issued under clause (a).
- (2) Where an offeror is required to file a report under sub- Change in section (1) or a further report under this subsection and the offeror or any person acting jointly or in concert with the offeror acquires beneficial ownership of, or the power to exercise control or direction over, or securities convertible into, an additional 2 per cent or more of the outstanding securities of the class or there is a change in any other material fact in such a report, the offeror,

material facts

- shall issue and file forthwith a press release containing the information prescribed by the regulations; and
- within two business days, shall file a report containing the same information as is contained in the press release issued under clause (a).

Restrictions on acquisitions

(3) During the period commencing on the occurrence of an event in respect of which a report or further report is required to be filed under this section and terminating on the expiry of one business day from the date that the report or further report is filed, neither the offeror nor any person or company acting jointly or in concert with the offeror shall acquire or offer to acquire beneficial ownership of any securities of the class in respect of which the report or further report is required to be filed or any securities convertible into securities of that class.

Exception

(4) Subsection (3) does not apply to an offeror that is the beneficial owner of, or has the power to exercise control or direction over, securities that, together with such offeror's securities of that class, constitute 20 per cent or more of the outstanding securities of that class.

Press release re acquisitions by person other than offeror during bid 100a.—(1) Where, after a formal bid has been made for voting or equity securities of an offeree issuer that is a reporting issuer and before the expiry of the bid, an offeror, other than the person or company making the bid, acquires beneficial ownership of, or the power to exercise control or direction over, securities of the class subject to the bid which, when added to such offeror's securities of that class, constitute 5 per cent or more of the outstanding securities of that class, the offeror shall, not later than the opening of trading on the next business day, issue a press release containing the information prescribed by the regulations and, forthwith, the offeror shall file a copy of the press release.

Further press

(2) Where an offeror that has filed a press release under subsection (1) or a further press release under this subsection or any person or company acting jointly or in concert with the offeror acquires beneficial ownership of, or control or direction over, securities of the class subject to the bid which, when added to the securities of that class acquired after the filing of the press release by the offeror and any person or company acting jointly or in concert with the offeror, aggregates an additional 2 per cent or more of the class of outstanding securities, the offeror shall, not later than the opening of trading on the next business day, issue a further press release containing the information prescribed by the regulations and, forthwith, the offeror shall file a copy of the press release.

No duplication of reports **100b.** Where the facts required to be reported or in respect of which a press release is required to be filed under sections 100 and 100a are identical, a report or press release is required only under the provision requiring the earlier report or press release, as the case may be.

100c.—(1) Where, on the application of an interested Applications person, it appears to the Commission that a person or company has not complied or is not complying with this Part or the regulations related to this Part, it may issue, subject to such terms and conditions as it may impose, an order,

1987

- restraining the distribution of any document used or issued in connection with a take-over bid or issuer bid:
- (b) requiring an amendment to or variation of any document used or issued in connection with a take-over bid or issuer bid and requiring the distribution of any amended, varied or corrected document; and
- (c) directing any person or company to comply with this Part or the regulations related to this Part or restraining any person or company from contravening this Part or the regulations related to this Part and directing the directors and senior officers of the person or company to cause the person or company to comply with or to cease contravening this Part or the regulations related to this Part.
- (2) Upon an application by any interested person, the Idem Commission may, subject to such terms and conditions as it may impose,
 - (a) decide for the purposes of subsection 96 (2) that an agreement, commitment or understanding with a selling security holder is made for reasons other than to increase the value of the consideration paid to the selling security holder for the securities of the selling security holder and that the agreement, commitment or understanding may be entered into notwithstanding that subsection;
 - (b) vary any time period set out in this Part and the regulations related to this Part; and
 - exempt any person or company from any of the (c) requirements of this Part or the regulations related to this Part where the Commission is satisfied that to do so would not be prejudicial to the public interest.
- **100d.**—(1) An interested person may apply to the High Applications Court for an order under this section.

Idem

- (2) Where, on an application under subsection (1), the judge hearing the application is satisfied that a person or company has not complied with this Part or the regulations related to this Part, the judge may make such interim or final order as the judge thinks fit, including, without limiting the generality of the foregoing,
 - (a) an order compensating any interested person who is a party to the application for damages suffered as a result of a contravention of this Part or the regulations related to this Part;
 - (b) an order rescinding a transaction with any interested person, including the issue of a security or a purchase and sale of a security;
 - (c) an order requiring any person or company to dispose of any securities acquired pursuant to or in connection with a take-over bid or an issuer bid;
 - (d) an order prohibiting any person or company from exercising any or all of the voting rights attaching to any securities; and
 - (e) an order requiring the trial of an issue.

Transition

- **100e.** This Part and section 129 and the regulations related thereto, as they read immediately before the coming into force of this section, shall continue to apply in respect of every take-over bid and issuer bid commenced before the coming into force of this section.
- 2. Section 103 of the said Act is repealed.
- 10.—(1) Subsection 118 (1) of the said Act is amended by striking out "and on summary conviction is liable, in the case of a person, other than an individual, or company, to a fine of not more than \$25,000 and, in the case of an individual, to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both" in the twenty-first, twenty-second, twenty-third, twenty-fourth and twenty-fifth lines and inserting in lieu thereof "and on conviction is liable to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than two years, or to both".
- (2) Subsection 118 (3) of the said Act is repealed and the following substituted therefor:
- (3) Where a company or a person other than an individual is guilty of an offence under subsection (1), every director or

officer of such company or person who authorized, permitted, or acquiesced in such offence is also guilty of an offence and on conviction is liable to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than two years, or to both.

(4) Where a person or company has contravened subsection Fine for 75 (1), (2) or (3) and the person or company has made a contravention of subs. 75 profit by reason of the contravention, the fine to which the (1.2 or 3) person or company is liable on conviction shall be not less than the profit made by the person or company by reason of the contravention and not more than the greater of,

- (a) \$1,000,000; and
- (b) an amount equal to triple the profit made by such person or company by reason of the contravention,

and subsection (1) does not apply in such circumstances.

(5) For the purposes of subsection (4), "profit" means,

Definition

- (a) if the accused purchased securities in contravention of subsection 75 (1), the average market price of the security in the twenty trading days following general disclosure of the material fact or material change less the amount that the accused paid for the security;
- (b) if the accused sold securities in contravention of subsection 75 (1), the amount that the accused received for the security less the average market price of the security in the twenty trading days following general disclosure of the material fact or material change;
- (c) if the accused informed another person or company of a material fact or material change in contravention of subsection 75 (2) or (3) and received any direct or indirect consideration for providing such information, the value of the consideration received.

11.—(1) Subsections 127 (1), (2), (3) and (4) of the said Act are repealed and the following substituted therefor:

(1) Where a take-over bid circular sent to the security hold- Liability for ers of an offeree issuer as required by Part XIX or any notice sentation of change or variation in respect thereof contains a misrepre- in circular sentation, every such security holder shall be deemed to have

misrepre-

relied on the misrepresentation and may elect to exercise a right of action for rescission or damages against the offeror or a right of action for damages against,

- (a) every person who at the time the circular or notice, as the case may be, was signed was a director of the offeror;
- (b) every person or company whose consent in respect of the circular or notice, as the case may be, has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by the person or company; and
- (c) each person who signed a certificate in the circular or notice, as the case may be, other than the persons included in clause (a).

Idem

(2) Where a directors' circular or a director's or officer's circular delivered to the security holders of an offeree issuer as required by Part XIX or any notice of change or variation in respect thereof contains a misrepresentation, every such security holder shall be deemed to have relied on the misrepresentation and has a right of action for damages against every director or officer who signed the circular or notice that contained the misrepresentation.

Idem

(3) Subsection (1) applies with necessary modifications where an issuer bid circular or any notice of change or variation in respect thereof contains a misrepresentation.

Defence

- (4) No person or company is liable under subsection (1), (2) or (3) if the person or company proves that the security holder had knowledge of the misrepresentation.
- (2) Subsections 127 (10) and (11) of the said Act are repealed and the following substituted therefor:

Deemed take-over bid circular or issuer bid circular

- (10) Where the offeror,
 - (a) in a take-over bid exempted from the provisions of Part XIX by clause 92 (1) (a); or
 - (b) in an issuer bid exempted from the provisions of Part XIX by clause 92 (3) (e),

is required, by the by-laws, regulations or policies of the stock exchange through the facilities of which the take-over bid or issuer bid is made, to file with it or to deliver to security hold-

ers of the offeree issuer a disclosure document, the disclosure document shall be deemed, for the purposes of this section, to be a take-over bid circular or issuer bid circular, as the case may be, delivered to the security holders as required by Part XIX

(11) The right of action for rescission or damages conferred No by this section is in addition to and without derogation from of rights any other right the security holders of the offeree issuer may have at law.

- 12. Section 129 of the said Act is repealed.
- 13. Section 130 of the said Act is repealed and the following substituted therefor:
- **130.** A purchaser of a security to whom a prospectus was Liability of required to be sent or delivered but was not sent or delivered offeror in compliance with subsection 70 (1) or a security holder to whom a take-over bid and take-over bid circular or an issuer bid and an issuer bid circular, or any notice of change or variation to any such bid or circular, were required to be delivered but were not delivered in compliance with section 94 or section 97 has a right of action for rescission or damages against the dealer or offeror who failed to comply with the applicable requirement.

- **14.**—(1) Subsections 131 (1) and (2) of the said Act are repealed and the following substituted therefor:
- (1) Every person or company in a special relationship with a Liability reporting issuer who purchases or sells securities of the reporting issuer with knowledge of a material fact or material fact or change with respect to the reporting issuer that has not been undisclosed generally disclosed is liable to compensate the seller or purchaser of the securities, as the case may be, for damages as a result of the trade unless.

- (a) the person or company in the special relationship with the reporting issuer proves that the person or company reasonably believed that the material fact or material change had been generally disclosed; or
- (b) the material fact or material change was known or ought reasonably to have been known to the seller or purchaser, as the case may be.
- (2) Every,

Liability for tipping

(a) reporting issuer;

- (b) person or company in a special relationship with a reporting issuer; and
- (c) person or company that proposes,
 - (i) to make a take-over bid, as defined in Part XIX, for the securities of a reporting issuer,
 - (ii) to become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with a reporting issuer, or
 - (iii) to acquire a substantial portion of the property of a reporting issuer,

and who informs another person or company of a material fact or material change with respect to the reporting issuer that has not been generally disclosed is liable to compensate for damages any person or company that thereafter sells securities of the reporting issuer to or purchases securities of the reporting issuer from the person or company that received the information unless.

- (d) the person or company who informed the other person or company proves that the informing person or company reasonably believed the material fact or material change had been generally disclosed;
- (e) the material fact or material change was known or ought reasonably to have been known to the seller or purchaser, as the case may be;
- (f) in the case of an action against a reporting issuer or a person in a special relationship with the reporting issuer, the information was given in the necessary course of business; or
- (g) in the case of an action against a person or company described in subclause (c) (i), (ii) or (iii), the information was given in the necessary course of business to effect the take-over bid, business combination or acquisition.
- (2) Subsection 131 (4) of the said Act is repealed and the following substituted therefor:

(4) Every person or company who is an insider, affiliate or associate of a reporting issuer that,

- Bill 156
- (a) sells or purchases the securities of the reporting issuer with knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed; or
- (b) communicates to another person, other than in the necessary course of business, knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed,

is accountable to the reporting issuer for any benefit or advantage received or receivable by the person or company as a result of the purchase, sale or communication, as the case may be, unless the person or company proves that the person or company reasonably believed that the material fact or material change had been generally disclosed.

- (3) Subsection 131 (7) of the said Act is repealed and the following substituted therefor:
- (7) For the purposes of this section, "a person or company in a special relationship with a reporting issuer" has the same meaning as in subsection 75 (5).

(8) For the purposes of subsections (1) and (2), a security of Idem the reporting issuer shall be deemed to include,

- (a) a put, call, option or other right or obligation to purchase or sell securities of the reporting issuer; or
- (b) a security, the market price of which varies materially with the market price of the securities of the issuer.

<u>15.</u>—(1) Section 139 of the said Act is amended by adding thereto the following paragraph:

18a. prescribing terms and conditions upon which a person or company may be designated as a recognized clearing agency.

- (2) The said section 139 is further amended by adding thereto the following paragraph:
 - 28a. respecting any matter necessary or advisable to carry out effectively the intent and purpose of sections 75 and 131, including, without restricting the generality of the foregoing, exempting any class or classes of persons and companies, trades or securi-

ties from any of the requirements of section 75 and from liability under section 131 and prescribing standards for determining when a material fact or material change has been generally disclosed.

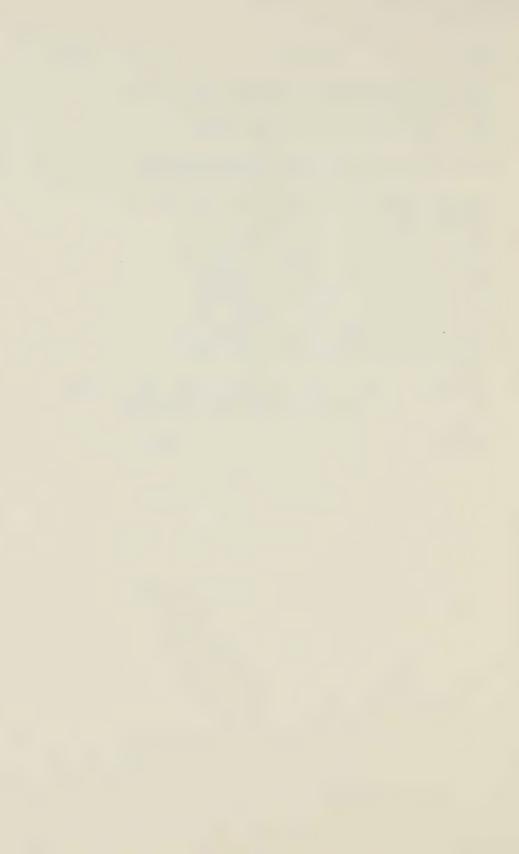
- (3) Paragraphs 32 and 33 of the said section 139 are repealed and the following substituted therefor:
 - 32. respecting any other matter necessary or advisable to carry out effectively the intent and purpose of Parts XIX and XX, including, without restricting the generality of the foregoing, providing for exemptions in addition to those set out in subsections 92 (1) and (3), providing for exemptions from section 93, restricting any exemption set out in subsection 92 (1) or (3) or section 93, prescribing rules in addition to those set out in section 94 and varying any rule set out in that section and prescribing the form and content of any circular, report or other document required to be delivered or filed.

Commencement <u>16</u>. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

<u>17</u>. The short title of this Act is the Securities Amendment Act, 1987.





2ND SESSION, 33RD LEGISLATURE, ONTARIO

36 ELIZABETH II, 1987

Bill 156

(Chapter 7 Statutes of Ontario, 1987)

An Act to amend the Securities Act

The Hon. M. Kwinter Minister of Financial Institutions



1st Reading November 24th, 1986

2nd Reading February 4th, 1987

February 11th, 1987 3rd Reading

Royal Assent February 12th, 1987



Bill 156 1987

An Act to amend the Securities Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- **1.** Subsection 1 (1) of the *Securities Act*, being chapter 466 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following paragraphs:
 - 2a. "clearing agency" means a person or company that acts as an intermediary in paying funds or delivering securities, or both, in connection with trades in securities and that provides centralized facilities for the clearing of trades in securities;
 - 34a. "recognized clearing agency" means a person or company that is designated as a recognized clearing agency by the Commission.
- **2.** Subsection 2 (2) of the said Act is repealed and the following substituted therefor:
- (2) The Commission shall be composed of a Chairman and Appointments not more than ten or less than eight other members, appointed by the Lieutenant Governor in Council, two of whom may be designated as Vice-Chairmen.
- **3.** Clause 18 (1) (a) of the said Act is repealed and the following substituted therefor:
 - (a) the financial affairs of a recognized clearing agency, registrant or reporting issuer; and
- **4.** The said Act is amended by adding thereto the following Part:

1987

PART VIII-A

CLEARING AGENCIES

Recognition of clearing agencies

21a.—(1) Upon the application of a person or company carrying on or proposing to carry on the business of a clearing agency, the Commission may designate the person or company as a recognized clearing agency where the Commission is satisfied that to do so would be in the public interest and that the person or company can comply with the regulations and all terms and conditions imposed by the Commission with respect to the designation.

Commission's powers

(2) The Commission, in designating a person or company as a recognized clearing agency, shall make the designation in writing and the designation may be made subject to such terms and conditions as the Commission may impose.

Idem

(3) The Commission, after giving a recognized clearing agency an opportunity to be heard, may suspend or cancel its designation as a recognized clearing agency or may impose terms and conditions upon the designation where in its opinion such action is in the public interest.

Idem

(4) The Commission, where it appears to it to be in the public interest, may make any decision with respect to any constating document, general agreement with its participants or members, by-law, rule, regulation, procedure or practice of a recognized clearing agency, including, without limiting the generality of the foregoing, suspending the operation of or requiring an amendment to any such constating document, general agreement, by-law, rule, regulation, procedure or practice.

Review of decisions of recognized clearing agency

- (5) Any person or company directly affected by any direction, order or decision made under any by-law, rule, regulation, procedure or practice of a recognized clearing agency may apply to the Commission for a hearing and review thereof and section 8 applies to the hearing and review in the same manner as to the hearing and review of a decision of the Director.
- 5. Paragraph 17 of subsection 34 (1) of the said Act is repealed and the following substituted therefor:
 - 17. A trade in a security to a person or company pursuant to a take-over bid or issuer bid made by that person or company.

- **6.** Clause 71 (1) (k) of the said Act is repealed and the following substituted therefor:
 - (k) the trade is made in a security to a person or company pursuant to a take-over bid or issuer bid made by that person or company.
- 7. Section 75 of the said Act is repealed and the following substituted therefor:
- 75.—(1) No person or company in a special relationship Trading with a reporting issuer shall purchase or sell securities of the undisclosed reporting issuer with the knowledge of a material fact or change material change with respect to the reporting issuer that has not been generally disclosed.

(2) No reporting issuer and no person or company in a spe- Tipping cial relationship with a reporting issuer shall inform, other than in the necessary course of business, another person or company of a material fact or material change with respect to the reporting issuer before the material fact or material change has been generally disclosed.

(3) No person or company that proposes,

- (a) to make a take-over bid, as defined in Part XIX, for the securities of a reporting issuer;
- (b) to become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with a reporting issuer; or
- (c) to acquire a substantial portion of the property of a reporting issuer.

shall inform another person or company of a material fact or material change with respect to the reporting issuer before the material fact or material change has been generally disclosed except where the information is given in the necessary course of business to effect the take-over bid, business combination or acquisition.

(4) No person or company shall be found to have contra- Defence vened subsection (1), (2) or (3) if the person or company proves that the person or company reasonably believed that the material fact or material change had been generally disclosed.

(5) For the purposes of this section, "person or company in Definition a special relationship with a reporting issuer" means,

- (a) a person or company that is an insider, affiliate or associate of.
 - (i) the reporting issuer,
 - (ii) a person or company that is proposing to make a take-over bid, as defined in Part XIX, for the securities of the reporting issuer, or
 - (iii) a person or company that is proposing to become a party to a reorganization, amalgamation, merger or arrangement or similar business combination with the reporting issuer or to acquire a substantial portion of its property;
- (b) a person or company that is engaging in or proposes to engage in any business or professional activity with or on behalf of the reporting issuer or with or on behalf of a person or company described in subclause (a) (ii) or (iii);
- (c) a person who is a director, officer or employee of the reporting issuer or of a person or company described in subclause (a) (ii) or (iii) or clause (b);
- (d) a person or company that learned of the material fact or material change with respect to the reporting issuer while the person or company was a person or company described in clause (a), (b) or (c);
- (e) a person or company that learns of a material fact or material change with respect to the issuer from any other person or company described in this subsection, including a person or company described in this clause, and knows or ought reasonably to have known that the other person or company is a person or company in such a relationship.

Idem

- (6) For the purpose of subsection (1), a security of the reporting issuer shall be deemed to include,
 - (a) a put, call, option or other right or obligation to purchase or sell securities of the reporting issuer; or
 - (b) a security, the market price of which varies materially with the market price of the securities of the issuer.

Bill 156

5

8. Part XIX of the said Act is repealed and the following substituted therefor:

PART XIX

TAKE-OVER BIDS AND ISSUER BIDS

88.—(1) In this Part,

Definitions

- "business day" means a day other than a Saturday or a holiday;
- "class of securities" includes a series of a class of securities;
- "equity security" means any security of an issuer that carries a residual right to participate in the earnings of the issuer and, upon the liquidation or winding up of the issuer, in its assets;
- "formal bid" means,
 - (a) a take-over bid or an issuer bid to which section 94 applies, or
 - (b) a take-over bid that is exempted from sections 94 to 99 or an issue bid that is exempted from sections 94, 95, 96, 97 and 99,
 - (i) by reason of an exemption under clause 92 (1) (a) or 92 (3) (e), if the offeror is required to deliver to every security holder whose last address as shown on the books of the offeree issuer is in Ontario a disclosure document of the type contemplated by subsection 127 (10), or
 - (ii) by reason of an exemption under clause 92 (1) (e) or 92 (3) (h), if the offeror is required to deliver disclosure material relating to the bid to holders of the class of securities subject to the bid;
- "interested person" means, for the purposes of sections 100c and 100d,
 - (a) an offeree issuer,
 - (b) a security holder, director or officer of an offeree issuer,

1987

- (c) an offeror,
- (d) the Director, and
- (e) any person or company not referred to in clauses(a) to (d) who in the opinion of the Commission or the Court, as the case may be, is a proper person to make an application under section 100c or 100d, as the case may be;

"issuer bid" means an offer to acquire or redeem securities of an issuer made by the issuer to any person or company who is in Ontario or to any security holder of the issuer whose last address as shown on the books of the issuer is in Ontario and includes a purchase, redemption or other acquisition of securities of the issuer by the issuer from any such person or company, but does not include an offer to acquire or redeem debt securities that are not convertible into securities other than debt securities;

"offer to acquire" includes,

- (a) an offer to purchase, or a solicitation of an offer to sell, securities,
- (b) an acceptance of an offer to sell securities, whether or not such offer to sell has been solicited,

or any combination thereof, and the person or company accepting an offer to sell shall be deemed to be making an offer to acquire to the person or company that made the offer to sell;

- "offeree issuer" means an issuer whose securities are the subject of a take-over bid, an issuer bid or an offer to acquire;
- "offeror" means a person or company who makes a take-over bid, an issuer bid or an offer to acquire and, for the purposes of section 100, includes a person or company who acquires a security, whether or not by way of a take-over bid, issuer bid or offer to acquire;
- "offeror's securities" means securities of an offeree issuer beneficially owned, or over which control or direction is exercised, on the date of an offer to acquire, by an offeror or any person or company acting jointly or in concert with the offeror;
- "published market" means, as to any class of securities, any market on which such securities are traded if the prices at

which they have been traded on that market are regularly published in a *bona fide* newspaper or business or financial publication of general and regular paid circulation;

"take-over bid" means an offer to acquire outstanding voting or equity securities of a class made to any person or company who is in Ontario or to any security holder of the offeree issuer whose last address as shown on the books of the offeree issuer is in Ontario, where the securities subject to the offer to acquire, together with the offeror's securities, constitute in the aggregate 20 per cent or more of the outstanding securities of that class of securities at the date of the offer to acquire.

(2) For the purposes of this Part,

Computation of time, expiry

- (a) a period of days shall be computed as commencing on the day next following the event which began the period and terminating at midnight on the last day of the period, except that if the last day of the period does not fall on a business day, the period terminates at midnight on the next business day; and
- (b) a take-over bid or an issuer bid expires at the later of,
 - (i) the end of the period, including any extension, during which securities may be deposited pursuant to the bid, and
 - (ii) the time at which the offeror becomes obligated by the terms of the bid to take-up or reject securities deposited thereunder.

(3) For the purposes of this Part,

Convertible securities

- (a) a security shall be deemed to be convertible into a security of another class if, whether or not on conditions, it is or may be convertible into or exchangeable for, or if it carries the right or obligation to acquire, a security of the other class, whether of the same or another issuer; and
- (b) a security that is convertible into a security of another class shall be deemed to be convertible into a security or securities of each class into which the second-mentioned security may be converted, either directly or through securities of one or more other classes of securities that are themselves convertible.

Deemed beneficial ownership **89.**—(1) For the purposes of this Part, in determining the beneficial ownership of securities of an offeror or of any person or company acting jointly or in concert with the offeror, at any given date, the offeror, person or company shall be deemed to have acquired and be the beneficial owner of a security, including an unissued security, if the offeror, person or company is the beneficial owner of any security convertible within sixty days following such date into such a security or has the right or obligation, whether or not on conditions, to acquire within such sixty days beneficial ownership of the security whether through the exercise of an option, warrant, right or subscription privilege or otherwise.

Calculation of holdings, joint offers (2) Where two or more offerors acting jointly or in concert make one or more offers to acquire securities of a class, the securities subject to any such offer or offers to acquire shall be deemed to be securities subject to the offer to acquire of each such offeror for the purpose of determining whether any such offeror is making a take-over bid.

Unissued securities deemed outstanding (3) Where an offeror or any person or company acting jointly or in concert with the offeror is deemed by reason of subsection (1) to be the beneficial owner of unissued securities, the securities shall be deemed to be outstanding for the purpose of calculating the number of outstanding securities of that class in respect of that offeror's offer to acquire.

Acting jointly or in concert

- **90.**—(1) For the purposes of this Part, it is a question of fact as to whether a person or company is acting jointly or in concert with an offeror and, without limiting the generality of the foregoing, the following shall be presumed to be acting jointly or in concert with an offeror:
 - 1. Every person or company who, as a result of any agreement, commitment or understanding, whether formal or informal, with the offeror or with any other person or company acting jointly or in concert with the offeror, acquires or offers to acquire securities of the issuer of the same class as those subject to the offer to acquire.
 - 2. Every person or company who, as a result of any agreement, commitment or understanding, whether formal or informal, with the offeror or with any other person or company acting jointly or in concert with the offeror, intends to exercise jointly or in concert with the offeror or with any other person or company acting jointly or in concert with the offeror any voting rights attaching to any securities of the offeree issuer.

- Every associate or affiliate of the offeror. 3.
- (2) Notwithstanding subsection (1), a registered dealer act-Limitation ing solely in an agency capacity for the offeror in connection with a take-over bid or an issuer bid and not executing principal transactions for its own account in the class of securities subject to the offer to acquire or performing services beyond customary dealer's functions shall not be presumed solely by reason of such agency relationship to be acting jointly or in concert with the offeror in connection with the bid.

91. For the purposes of this Part, a reference to an offer Application to acquire or to the acquisition or ownership of securities or to direct and control or direction over securities shall be construed to indirect include a direct or indirect offer to acquire or the direct or etc. indirect acquisition or ownership of securities, or the direct or indirect control or direction over securities, as the case may he

92.—(1) Subject to the regulations, a take-over bid is Exempted exempt from sections 94 to 99 if,

- (a) the bid is made through the facilities of a stock exchange recognized by the Commission for the purposes of this clause;
- the bid is for not more than 5 per cent of the outstanding securities of a class of securities of the issuer and.
 - (i) the aggregate number of securities acquired by the offeror and any person or company acting jointly or in concert with the offeror within any period of twelve months in reliance upon the exemption provided by this clause does not, when aggregated with acquisitions otherwise made by the offeror and any person or company acting jointly or in concert with the offeror within the same twelve month period, constitute in excess of 5 per cent of the outstanding securities of that class of the issuer at the commencement of the twelve month period, and
 - (ii) if there is a published market for the securities acquired, the value of the consideration paid for any of the securities acquired is not in excess of the market price at the date of acquisition determined in accordance with the

regulations plus reasonable brokerage fees or commissions actually paid;

- (c) all of the following conditions apply,
 - (i) purchases are made from not more than five persons or companies in the aggregate, including persons or companies outside of Ontario,
 - (ii) the bid is not made generally to security holders of the class of securities that is the subject of the bid, and
 - (iii) the value of the consideration paid for any of the securities, including brokerage fees or commissions, does not exceed 115 per cent of the market price of securities of that class at the date of the bid determined in accordance with the regulations;
- (d) the offeree issuer is not a reporting issuer, there is not a published market in respect of the securities that are the subject of the bid, and the number of holders of securities of that class is not more than fifty, exclusive of holders who are in the employment of the offeree issuer or an affiliate of the offeree issuer, and exclusive of holders who were formerly in the employment of the offeree issuer or an affiliate of the offeree issuer and who while in that employment were, and have continued after that employment to be, security holders of the offeree issuer:
- (e) the number of holders, whose last address as shown on the books of the offeree issuer is in Ontario, of securities of the class subject to the bid is fewer than fifty and the securities held by such holders constitute, in the aggregate, less than 2 per cent of the outstanding securities of that class, the bid is made in compliance with the laws of a jurisdiction that is recognized for the purposes of this clause by the Commission, and all material relating to the bid that is sent by the offeror to holders of securities of the class that is subject to the bid is concurrently sent to all holders of such securities whose last address as shown on the books of the offeree issuer is in Ontario and filed; or
- (f) it is exempted by the regulations.

11

- (2) For the purposes of clause (1) (c), where an offeror Determimakes an offer to acquire securities from a person or company of number of and the offeror knows or ought to know after reasonable security enquiry that,
 - (a) one or more other persons or companies on whose behalf that person or company is acting as nominee, agent, trustee, executor, administrator or other legal representative has a direct beneficial interest in those securities, then each of such others shall be included in the determination of the number of persons and companies to whom the offer to acquire has been made, but, where an inter vivos trust has been established by a single settlor or where an estate has not vested in all persons beneficially entitled thereto, the trust or estate shall be considered a single security holder in such determination; or
 - (b) the person or company acquired the securities in order that the offeror might make use of the exemption provided by clause (1) (c), then each person or company from whom those securities were acquired shall be included in the determination of the number of persons and companies to whom the offer to acquire has been made.
- (3) Subject to the regulations, an issuer bid is exempt from Exempted sections 94, 95, 96, 97 and 99 if.

- (a) the securities are purchased, redeemed or otherwise acquired in accordance with terms and conditions attaching thereto that permit the purchase, redemption or acquisition of the securities by the issuer without the prior agreement of the owners of the securities, or where the securities are acquired to meet sinking fund or purchase fund requirements;
- (b) the purchase, redemption or other acquisition is required by the instrument creating or governing the class of securities or by the statute under which the issuer was incorporated, organized or continued:
- the securities carry with them or are accompanied (c) by a right of the owner of the securities to require the issuer to redeem or repurchase the securities and the securities are acquired pursuant to the exercise of such right;

- (d) the securities are acquired from a current or former employee of the issuer or of an affiliate of the issuer, and if there is a published market in respect of the securities.
 - (i) the value of the consideration paid for any of the securities acquired does not exceed the market price of the securities at the date of the acquisition determined in accordance with the regulations, and
 - (ii) the aggregate number or, in the case of convertible debt securities, the aggregate principal amount of securities acquired by the issuer within a period of twelve months in reliance on the exemption provided by this clause does not exceed 5 per cent of the securities of that class issued and outstanding at the commencement of the period;
- (e) the bid is made through the facilities of a stock exchange recognized by the Commission for the purpose of this clause;
- (f) following the publication of a notice of intention in the form and manner prescribed by the regulations, the issuer purchases securities in the normal course in the open market, including through the facilities of a stock exchange, if the aggregate number, or, in the case of convertible debt securities, the aggregate principal amount, of securities acquired by the issuer within a period of twelve months in reliance on the exemption provided by this clause does not exceed 5 per cent of the securities of that class issued and outstanding at the commencement of the period;
- (g) the issuer is not a reporting issuer, there is not a published market in respect of the securities that are the subject of the bid and the number of holders of securities of the issuer is not more than fifty, exclusive of holders who are in the employment of the issuer or an affiliate of the issuer, and exclusive of holders who were formerly in the employment of the issuer or an affiliate of the issuer and who while in that employment were, and have continued after the employment to be, security holders of the issuer;

13

(h) the number of holders, whose last address as shown on the books of the issuer is in Ontario, of securities of the class subject to the bid is fewer than fifty and the securities held by such holders constitute, in the aggregate, less than 2 per cent of the outstanding securities of that class, the bid is made in compliance with the laws of a jurisdiction that is recognized for the purposes of this clause by the Commission, and all material relating to the bid that is sent by the offeror to holders of securities of the class that is subject to the bid is concurrently sent to all holders of such securities whose last address as shown on the books of the issuer is in Ontario and filed: or

SECURITIES

- (i) it is exempted by the regulations.
- (4) A bid that is made in reliance upon any exemption in Stock this section through the facilities of a stock exchange shall be requirements made in accordance with the by-laws, regulations and policies of the exchange.

93.—(1) In this section, "offeror" means,

Definition

- (a) an offeror making a formal bid other than a bid referred to in clause 92 (1) (e) or 92 (3) (h);
- (b) a person or company acting jointly or in concert with an offeror referred to in clause (a):
- (c) a security holder of an offeror referred to in clause (a) who, as regards the offeror, is a person or company or a member of a combination of persons or companies referred to in subparagraph iii of paragraph 11 of subsection 1 (1) or an associate or affiliate of such security holder.
- (2) An offeror shall not offer to acquire or make, or enter Restrictions into, any agreement, commitment or understanding to acquire beneficial ownership of any securities of the class that are subject to a take-over bid otherwise than pursuant to the bid on and from the day of the announcement of the offeror's intention to make the bid until its expiry.

acquisitions

(3) Notwithstanding subsection (2), an offeror making a Permitted take-over bid may purchase, through the facilities of a stock exchange recognized by the Commission for the purpose of clause 92 (1) (a), securities of the class that are subject to the bid and securities convertible into securities of that class com-

purchases during take-over bid mencing on the third business day following the date of the bid until the expiry of the bid, if,

- (a) the intention to make such purchases is stated in the take-over bid circular;
- (b) the aggregate number of securities acquired under this subsection does not constitute in excess of 5 per cent of the outstanding securities of that class as at the date of the bid; and
- (c) the offeror issues and files a press release forthwith after the close of business of the exchange on each day on which securities have been purchased under this subsection disclosing the information prescribed by the regulations.

Restrictions on acquisition during issuer bid (4) An offeror making an issuer bid shall not offer to acquire, or make or enter into any agreement, commitment or understanding to acquire, beneficial ownership of any securities of the class that are subject to the bid otherwise than pursuant to the bid on and from the day of the announcement of the offeror's intention to make the bid until the bid's expiry, but this subsection does not apply so as to prevent the offeror from purchasing, redeeming or otherwise acquiring any such securities during such period in reliance on an exemption under clause 92 (3) (a), (b) or (c).

Integration with pre-bid private transactions

- (5) Where a take-over bid that is a formal bid is made by an offeror and, within the period of ninety days immediately preceding the bid, the offeror acquired beneficial ownership of securities of the class subject to the bid pursuant to a transaction not generally available on identical terms to holders of that class of securities.
 - (a) the offeror shall offer consideration for securities deposited under the bid at least equal to the highest consideration that was paid on a per security basis under any of such prior transactions or the offeror shall offer at least the cash equivalent of such consideration; and
 - (b) the offeror shall offer to acquire under the bid that percentage of securities of the class subject to the bid that is at least equal to the highest percentage that the number of securities acquired from a seller in such a prior transaction was of the total number of securities of that class beneficially owned by such seller at the time of the prior transaction.

(6) An offeror shall not acquire beneficial ownership of Restriction securities of the class that was subject to the bid by way of a post-bid transaction that is not generally available on identical terms to acquisition holders of that class of securities during the period beginning with the expiry of the bid and ending at the end of the twentieth business day thereafter, and whether or not any securities are taken up under the bid.

(7) Subsections (5) and (6) do not apply to trades effected Exceptions, in the normal course on a published market, so long as,

course trades

- (a) any broker acting for the purchaser or seller does not perform services beyond the customary broker's function and does not receive more than reasonable fees or commissions:
- (b) the purchaser or any person or company acting for the purchaser does not solicit or arrange for the solicitation of offers to sell securities of the class subject to the bid; and
- the seller or any person or company acting for the seller does not solicit or arrange for the solicitation of offers to buy securities of the class subject to the bid
- (8) An offeror shall not, except pursuant to the bid, sell or Sales during make or enter into any agreement, commitment or understanding to sell any securities of the class subject to the bid on and from the day of the announcement of the offeror's intention to make the bid until its expiry.

(9) Notwithstanding subsection (8), an offeror, before the Exception expiry of a bid, may make or enter into an arrangement, commitment or understanding to sell securities that may be taken up by the offeror pursuant to a bid, after the expiry of the bid, if the intention to sell is disclosed in the take-over bid circular or issuer bid circular, as the case may be.

94. Subject to the regulations, the following rules apply to every take-over bid and issuer bid:

provisions

The bid shall be made to all holders of securities of 1. the class that is subject to the bid who are in Ontario, and delivered by the offeror to all holders, whose last address as shown on the books of the offeree issuer is in Ontario, of securities of that class and of securities that, before the expiry of the bid, are convertible into securities of that class.

Delivery

1987

Minimum deposit period 2. The offeror shall allow at least twenty-one days from the date of the bid during which securities may be deposited pursuant to the bid.

When taking up prohibited 3. No securities deposited pursuant to the bid shall be taken up by the offeror until the expiration of twenty-one days from the date of the bid.

Withdrawal

- 4. Securities deposited pursuant to the bid may be withdrawn by or on behalf of a depositing security holder.
 - i. at any time before the expiration of twentyone days from the date of the bid,
 - ii. at any time before the expiration of ten days from the date of a notice of change or variation under section 97, and
 - iii. where the securities have not been taken up and paid for by the offeror, after forty-five days from the date of the bid.

Exception

- 5. The right of withdrawal conferred by subparagraph ii of paragraph 4 does not apply,
 - i. where the securities have been taken up by the offeror at the date of the notice.
 - ii. where a variation in the terms of a bid consists solely of an increase in the consideration offered for the securities subject to the bid and the time for deposit is not extended for a period greater than that required by subsection 97 (5), or
 - iii. in the circumstances described in subsection 97 (6).

Notice of withdrawal 6. Notice of withdrawal of any securities under paragraph 4 shall be made by or on behalf of the depositing security holder by a method that provides the depositary designated under the bid with a written or printed copy and, to be effective, the notice must be actually received by the depositary and, where notice is given in accordance with this paragraph, the offeror shall return the securities to the depositing security holder.

17

7. Where the bid is made for less than all of the class Pro rata of securities subject to the bid and where a greater number of securities is deposited pursuant thereto than the offeror is bound or willing to acquire under the bid, the securities shall be taken up and paid for by the offeror, as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each depositing security holder.

SECURITIES

Where an offeror purchases securities as permitted Effect of 8. by subsection 93 (3), the securities so purchased shall be counted in the determination of whether a condition as to the minimum number of securities to be deposited in the bid has been fulfilled, but shall not reduce the number of securities the offeror is bound under the bid to take up.

Subject to paragraphs 10 and 11, the offeror shall When 9. take up and pay for securities deposited under the must be bid, where all the terms and conditions of the bid taken up have been complied with or waived, not later than ten days after the expiry of the bid.

securities and paid for

Any securities that are taken up by the offeror Idem under the bid shall be paid for by the offeror as soon as possible, and in any event not more than three days, after the taking up of the securities.

Any securities deposited pursuant to the bid subse- Idem quent to the date on which the offeror first takes up securities deposited under the bid shall be taken up and paid for by the offeror within ten days of the deposit of the securities.

A bid may not be extended by the offeror, where Extension all the terms and conditions thereof have been complied with except those waived by the offeror, unless the offeror first takes up and pays for all securities deposited thereunder and not withdrawn.

Where all the terms and conditions of the bid have Press release been complied with or waived, the offeror shall forthwith issue a notice by press release to that effect, which press release shall disclose the approximate number of securities deposited and the approximate number that will be taken up.

95. Where a take-over bid or issuer bid provides that the Financing of bid consideration for the securities deposited pursuant to the bid is to be paid in cash or partly in cash, the offeror shall make

adequate arrangements prior to the bid to ensure that the required funds are available to effect payment in full for all securities that the offeror has offered to acquire.

Identical consideration

96.—(1) Subject to the regulations, where a take-over bid or issuer bid is made, all holders of the same class of securities shall be offered identical consideration.

Collateral benefit (2) If an offeror makes or intends to make a take-over bid or issuer bid, neither the offeror nor any person or company acting jointly or in concert with the offeror shall enter into any collateral agreement, commitment or understanding with any holder or beneficial owner of securities of the offeree issuer that has the effect of providing to the holder or owner a consideration of greater value than that offered to the other holders of the same class of securities.

Increasing consideration

(3) Where a variation in the terms of a take-over bid or issuer bid before the expiry of the bid increases the value of the consideration offered for the securities subject to the bid, the offeror shall pay such increased consideration to each person or company whose securities are taken up pursuant to the bid, whether or not such securities were taken up by the offeror before the variation.

Offeror's circular

97.—(1) An offeror shall deliver, with or as part of a take-over bid or issuer bid, a take-over bid circular or issuer bid circular, as the case may be.

Notice of change in information

(2) Where, before the expiry of a take-over bid or issuer bid or after the expiry of the bid but before the expiry of all rights to withdraw the relevant securities, a change has occurred in the information contained in a take-over bid circular or issuer bid circular or in any notice of change or notice of variation that would reasonably be expected to affect the decision of the holders of the securities of the offeree issuer to accept or reject the bid, a notice of the change shall be delivered to every person or company to whom the circular was required to be delivered and whose securities were not taken up at the date of the occurrence of the change.

Idem

(3) Subsection (2) does not apply to a change that is not within the control of the offeror or of an affiliate of the offeror unless it is a change in a material fact relating to the securities being offered in exchange for securities of the offeree issuer.

Variation in terms of bid (4) Where there is a variation in the terms of a take-over bid or issuer bid, including any extension of the period during which securities may be deposited thereunder and whether or

not the variation results from the exercise of any right contained in the bid, a notice of the variation shall be delivered to every person or company to whom the take-over bid circular or issuer bid circular was required to be delivered and whose securities were not taken up at the date of the variation

SECURITIES

(5) Subject to subsection (6), where there is a variation in Idem the terms of a take-over bid or issuer bid, the period during which securities may be deposited pursuant to the bid shall not expire before ten days after the notice of variation has been delivered

(6) Subsection (5) does not apply to a variation in the terms Idem of a bid consisting solely of the waiver of a condition in the bid where the consideration offered for the securities that are subject to the bid consists solely of cash.

(7) A take-over bid circular, issuer bid circular, notice of Content change and notice of variation shall be in the form and shall contain the information required by this Part and the regulations

98.—(1) Where a take-over bid has been made, a direc-Directors' tors' circular shall be prepared and delivered by the board of directors of an offeree issuer to every person and company to whom a take-over bid must be delivered under paragraph 1 of section 94, not later than ten days after the date of the bid.

(2) The board of directors shall include in a directors' circu-Recommenlar either a recommendation to accept or to reject a take-over bid and the reasons for their recommendation, or a statement that they are unable to make or are not making a recommendation and if no recommendation is made, the reasons for not making a recommendation.

(3) An individual director or officer may recommend Individual acceptance or rejection of a take-over bid if the director or director's officer delivers with the recommendation a circular prepared circular in accordance with the regulations.

officer's or

(4) Where a board of directors is considering recommending acceptance or rejection of a take-over bid, it shall, at the time of sending or delivering a directors' circular, advise the security holders of this fact and may advise them not to tender their securities until further communication is received from the directors.

Advising of

(5) Where subsection (4) applies, the board of directors Advising of shall deliver the recommendation or the decision not to make directors

a recommendation at least seven days before the scheduled expiry of the period during which securities may be deposited under the bid.

Notice of change

- (6) Where, before the expiry of a take-over bid or after the expiry of the bid but before the expiry of all rights to withdraw the securities that have been deposited under the bid,
 - (a) a change has occurred in the information contained in a directors' circular or in any notice of change to a directors' circular that would reasonably be expected to affect the decision of the holders of the securities to accept or reject the bid, the board of directors of the offeree issuer shall forthwith deliver a notice of the change to every person or company to whom the circular was required to be sent disclosing the nature and substance of the change; or
 - (b) a change has occurred in the information contained in an individual director's or officer's circular or any notice of change thereto that would reasonably be expected to affect the decision of the holders of the securities to accept or reject the bid, other than a change that is not within the control of the individual director or officer, as the case may be, the individual director or officer, as the case may be, shall forthwith deliver a notice of change in relation thereto to the board of directors.

Circulation of individual circulars and notices

(7) Where an individual director or officer submits a circular under subsection (3) or a notice of change under clause (6) (b) to the board of directors, the board, at the offeree issuer's expense, shall deliver a copy of the circular or notice to the persons and companies referred to in subsection (1).

Content

(8) A directors' circular, director's or officer's circular and a notice of change shall be in the form and contain the information required by this Part and the regulations.

Delivery to offeree issuer

99.—(1) A take-over bid and any notice of change or variation shall be filed and shall be delivered to the offeree issuer at its principal office and an issuer bid and any notice of change or variation shall be filed on the day such bid or notice is delivered to holders of securities of the offeree issuer, or as soon as practicable thereafter.

Delivery to offeree issuer and Commission (2) Every directors' circular and every individual director's or officer's circular or any notice of change in relation thereto that is delivered to security holders of an offeree issuer shall be filed and shall be delivered to the offeror at its principal

office on the day the directors' circular or individual director's or officer's circular or the notice of change is delivered to the holders of securities of the offeree issuer, or as soon as practicable thereafter.

SECURITIES

(3) A take-over bid or issuer bid, a take-over bid circular, Delivery and date of bid, an issuer bid circular, a directors' circular, an individual director's or officer's circular and every notice of change or variation in any such bid or circular shall be mailed by prepaid first class mail or delivered by personal delivery or in such other manner as the Director may approve to the intended recipient and any bid, circular or notice so mailed or delivered shall be deemed to have been delivered and such bid, circular or notice shall be deemed conclusively for the purposes of sections 94, 97 and 98 and this section to have been dated as of the date on which it was so mailed or delivered to all or substantially all of the persons and companies entitled to receive it.

100.—(1) Every offeror that acquires beneficial ownership Securities. of, or the power to exercise control or direction over, or securities convertible into, voting or equity securities of any class of a reporting issuer that, together with such offeror's securities of that class, would constitute 10 per cent or more of the outstanding securities of that class.

- shall issue and file forthwith a press release containing the information prescribed by the regulations; and
- (b) within two business days, shall file a report containing the same information as is contained in the press release issued under clause (a).
- (2) Where an offeror is required to file a report under sub- Change in section (1) or a further report under this subsection and the offeror or any person acting jointly or in concert with the offeror acquires beneficial ownership of, or the power to exercise control or direction over, or securities convertible into, an additional 2 per cent or more of the outstanding securities of the class or there is a change in any other material fact in such a report, the offeror,

material facts

- (a) shall issue and file forthwith a press release containing the information prescribed by the regulations; and
- (b) within two business days, shall file a report containing the same information as is contained in the press release issued under clause (a).

Restrictions on acquisitions

(3) During the period commencing on the occurrence of an event in respect of which a report or further report is required to be filed under this section and terminating on the expiry of one business day from the date that the report or further report is filed, neither the offeror nor any person or company acting jointly or in concert with the offeror shall acquire or offer to acquire beneficial ownership of any securities of the class in respect of which the report or further report is required to be filed or any securities convertible into securities of that class.

Exception

(4) Subsection (3) does not apply to an offeror that is the beneficial owner of, or has the power to exercise control or direction over, securities that, together with such offeror's securities of that class, constitute 20 per cent or more of the outstanding securities of that class.

Press release re acquisitions by person other than offeror during bid 100a.—(1) Where, after a formal bid has been made for voting or equity securities of an offeree issuer that is a reporting issuer and before the expiry of the bid, an offeror, other than the person or company making the bid, acquires beneficial ownership of, or the power to exercise control or direction over, securities of the class subject to the bid which, when added to such offeror's securities of that class, constitute 5 per cent or more of the outstanding securities of that class, the offeror shall, not later than the opening of trading on the next business day, issue a press release containing the information prescribed by the regulations and, forthwith, the offeror shall file a copy of the press release.

Further press releases (2) Where an offeror that has filed a press release under subsection (1) or a further press release under this subsection or any person or company acting jointly or in concert with the offeror acquires beneficial ownership of, or control or direction over, securities of the class subject to the bid which, when added to the securities of that class acquired after the filing of the press release by the offeror and any person or company acting jointly or in concert with the offeror, aggregates an additional 2 per cent or more of the class of outstanding securities, the offeror shall, not later than the opening of trading on the next business day, issue a further press release containing the information prescribed by the regulations and, forthwith, the offeror shall file a copy of the press release.

No duplication of reports **100b.** Where the facts required to be reported or in respect of which a press release is required to be filed under sections 100 and 100a are identical, a report or press release is required only under the provision requiring the earlier report or press release, as the case may be.

100c.—(1) Where, on the application of an interested Applications person, it appears to the Commission that a person or company has not complied or is not complying with this Part or the regulations related to this Part, it may issue, subject to such terms and conditions as it may impose, an order,

SECURITIES

- (a) restraining the distribution of any document used or issued in connection with a take-over bid or issuer bid:
- (b) requiring an amendment to or variation of any document used or issued in connection with a take-over bid or issuer bid and requiring the distribution of any amended, varied or corrected document; and
- (c) directing any person or company to comply with this Part or the regulations related to this Part or restraining any person or company from contravening this Part or the regulations related to this Part and directing the directors and senior officers of the person or company to cause the person or company to comply with or to cease contravening this Part or the regulations related to this Part.
- (2) Upon an application by any interested person, the Idem Commission may, subject to such terms and conditions as it may impose,
 - (a) decide for the purposes of subsection 96 (2) that an agreement, commitment or understanding with a selling security holder is made for reasons other than to increase the value of the consideration paid to the selling security holder for the securities of the selling security holder and that the agreement, commitment or understanding may be entered into notwithstanding that subsection:
 - (b) vary any time period set out in this Part and the regulations related to this Part; and
 - exempt any person or company from any of the (c) requirements of this Part or the regulations related to this Part where the Commission is satisfied that to do so would not be prejudicial to the public interest.
- **100d.**—(1) An interested person may apply to the High Applications Court for an order under this section.

Idem

- (2) Where, on an application under subsection (1), the judge hearing the application is satisfied that a person or company has not complied with this Part or the regulations related to this Part, the judge may make such interim or final order as the judge thinks fit, including, without limiting the generality of the foregoing,
 - (a) an order compensating any interested person who is a party to the application for damages suffered as a result of a contravention of this Part or the regulations related to this Part;
 - (b) an order rescinding a transaction with any interested person, including the issue of a security or a purchase and sale of a security;
 - (c) an order requiring any person or company to dispose of any securities acquired pursuant to or in connection with a take-over bid or an issuer bid;
 - (d) an order prohibiting any person or company from exercising any or all of the voting rights attaching to any securities; and
 - (e) an order requiring the trial of an issue.

Transition

- **100e.** This Part and section 129 and the regulations related thereto, as they read immediately before the coming into force of this section, shall continue to apply in respect of every take-over bid and issuer bid commenced before the coming into force of this section.
 - **9.** Section 103 of the said Act is repealed.
- 10.—(1) Subsection 118 (1) of the said Act is amended by striking out "and on summary conviction is liable, in the case of a person, other than an individual, or company, to a fine of not more than \$25,000 and, in the case of an individual, to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both" in the twenty-first, twenty-second, twenty-third, twenty-fourth and twenty-fifth lines and inserting in lieu thereof "and on conviction is liable to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than two years, or to both".
- (2) Subsection 118 (3) of the said Act is repealed and the following substituted therefor:
- Directors and officers
- (3) Where a company or a person other than an individual is guilty of an offence under subsection (1), every director or

officer of such company or person who authorized, permitted, or acquiesced in such offence is also guilty of an offence and on conviction is liable to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than two years, or to both.

(4) Where a person or company has contravened subsection Fine for 75 (1), (2) or (3) and the person or company has made a contravention of subs. 75 profit by reason of the contravention, the fine to which the (1, 2 or 3) person or company is liable on conviction shall be not less than the profit made by the person or company by reason of the contravention and not more than the greater of,

- (a) \$1,000,000; and
- (b) an amount equal to triple the profit made by such person or company by reason of the contravention,

and subsection (1) does not apply in such circumstances.

(5) For the purposes of subsection (4), "profit" means,

- (a) if the accused purchased securities in contravention of subsection 75 (1), the average market price of the security in the twenty trading days following general disclosure of the material fact or material change less the amount that the accused paid for the security;
- (b) if the accused sold securities in contravention of subsection 75 (1), the amount that the accused received for the security less the average market price of the security in the twenty trading days following general disclosure of the material fact or material change;
- if the accused informed another person or company of a material fact or material change in contravention of subsection 75 (2) or (3) and received any direct or indirect consideration for providing such information, the value of the consideration received

11.—(1) Subsections 127 (1), (2), (3) and (4) of the said Act are repealed and the following substituted therefor:

(1) Where a take-over bid circular sent to the security hold- Liability for ers of an offeree issuer as required by Part XIX or any notice misrepresentation of change or variation in respect thereof contains a misrepre- in circular sentation, every such security holder shall be deemed to have

relied on the misrepresentation and may elect to exercise a right of action for rescission or damages against the offeror or a right of action for damages against,

- (a) every person who at the time the circular or notice, as the case may be, was signed was a director of the offeror:
- (b) every person or company whose consent in respect of the circular or notice, as the case may be, has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by the person or company; and
- (c) each person who signed a certificate in the circular or notice, as the case may be, other than the persons included in clause (a).

Idem

(2) Where a directors' circular or a director's or officer's circular delivered to the security holders of an offeree issuer as required by Part XIX or any notice of change or variation in respect thereof contains a misrepresentation, every such security holder shall be deemed to have relied on the misrepresentation and has a right of action for damages against every director or officer who signed the circular or notice that contained the misrepresentation.

Idem

(3) Subsection (1) applies with necessary modifications where an issuer bid circular or any notice of change or variation in respect thereof contains a misrepresentation.

Defence

- (4) No person or company is liable under subsection (1), (2) or (3) if the person or company proves that the security holder had knowledge of the misrepresentation.
- (2) Subsections 127 (10) and (11) of the said Act are repealed and the following substituted therefor:

Deemed take-over bid circular or issuer bid circular

- (10) Where the offeror,
 - (a) in a take-over bid exempted from the provisions of Part XIX by clause 92 (1) (a); or
 - (b) in an issuer bid exempted from the provisions of Part XIX by clause 92 (3) (e),

is required, by the by-laws, regulations or policies of the stock exchange through the facilities of which the take-over bid or issuer bid is made, to file with it or to deliver to security holders of the offeree issuer a disclosure document, the disclosure document shall be deemed, for the purposes of this section, to be a take-over bid circular or issuer bid circular, as the case may be, delivered to the security holders as required by Part XIX.

(11) The right of action for rescission or damages conferred No derogation by this section is in addition to and without derogation from of rights any other right the security holders of the offeree issuer may have at law.

- **12.** Section 129 of the said Act is repealed.
- 13. Section 130 of the said Act is repealed and the following substituted therefor:
- 130. A purchaser of a security to whom a prospectus was Liability of required to be sent or delivered but was not sent or delivered offeror in compliance with subsection 70 (1) or a security holder to whom a take-over bid and take-over bid circular or an issuer bid and an issuer bid circular, or any notice of change or variation to any such bid or circular, were required to be delivered but were not delivered in compliance with section 94 or section 97 has a right of action for rescission or damages against the dealer or offeror who failed to comply with the applicable requirement.

- **14.**—(1) Subsections 131 (1) and (2) of the said Act are repealed and the following substituted therefor:
- (1) Every person or company in a special relationship with a Liability reporting issuer who purchases or sells securities of the reporting issuer with knowledge of a material fact or material fact or change with respect to the reporting issuer that has not been undisclosed generally disclosed is liable to compensate the seller or purchaser of the securities, as the case may be, for damages as a result of the trade unless.

- (a) the person or company in the special relationship with the reporting issuer proves that the person or company reasonably believed that the material fact or material change had been generally disclosed; or
- the material fact or material change was known or ought reasonably to have been known to the seller or purchaser, as the case may be.
- (2) Every,

Liability for tipping

(a) reporting issuer;

- (b) person or company in a special relationship with a reporting issuer; and
- (c) person or company that proposes,
 - (i) to make a take-over bid, as defined in Part XIX, for the securities of a reporting issuer,
 - (ii) to become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with a reporting issuer, or
 - (iii) to acquire a substantial portion of the property of a reporting issuer,

and who informs another person or company of a material fact or material change with respect to the reporting issuer that has not been generally disclosed is liable to compensate for damages any person or company that thereafter sells securities of the reporting issuer to or purchases securities of the reporting issuer from the person or company that received the information unless,

- (d) the person or company who informed the other person or company proves that the informing person or company reasonably believed the material fact or material change had been generally disclosed;
- (e) the material fact or material change was known or ought reasonably to have been known to the seller or purchaser, as the case may be;
- (f) in the case of an action against a reporting issuer or a person in a special relationship with the reporting issuer, the information was given in the necessary course of business; or
- (g) in the case of an action against a person or company described in subclause (c) (i), (ii) or (iii), the information was given in the necessary course of business to effect the take-over bid, business combination or acquisition.
- (2) Subsection 131 (4) of the said Act is repealed and the following substituted therefor:
- (4) Every person or company who is an insider, affiliate or associate of a reporting issuer that,

Account-

ability

for gain

- 56
- (a) sells or purchases the securities of the reporting issuer with knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed; or
- (b) communicates to another person, other than in the necessary course of business, knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed,

is accountable to the reporting issuer for any benefit or advantage received or receivable by the person or company as a result of the purchase, sale or communication, as the case may be, unless the person or company proves that the person or company reasonably believed that the material fact or material change had been generally disclosed.

- (3) Subsection 131 (7) of the said Act is repealed and the following substituted therefor:
- (7) For the purposes of this section, "a person or company Definition in a special relationship with a reporting issuer" has the same meaning as in subsection 75 (5).
- (8) For the purposes of subsections (1) and (2), a security of Idem the reporting issuer shall be deemed to include,
 - (a) a put, call, option or other right or obligation to purchase or sell securities of the reporting issuer; or
 - (b) a security, the market price of which varies materially with the market price of the securities of the issuer.
- **15.**—(1) Section 139 of the said Act is amended by adding thereto the following paragraph:
 - 18a. prescribing terms and conditions upon which a person or company may be designated as a recognized clearing agency.
- (2) The said section 139 is further amended by adding thereto the following paragraph:
 - 28a. respecting any matter necessary or advisable to carry out effectively the intent and purpose of sections 75 and 131, including, without restricting the generality of the foregoing, exempting any class or classes of persons and companies, trades or securi-

ties from any of the requirements of section 75 and from liability under section 131 and prescribing standards for determining when a material fact or material change has been generally disclosed.

- (3) Paragraphs 32 and 33 of the said section 139 are repealed and the following substituted therefor:
 - 32. respecting any other matter necessary or advisable to carry out effectively the intent and purpose of Parts XIX and XX, including, without restricting the generality of the foregoing, providing for exemptions in addition to those set out in subsections 92 (1) and (3), providing for exemptions from section 93, restricting any exemption set out in subsection 92 (1) or (3) or section 93, prescribing rules in addition to those set out in section 94 and varying any rule set out in that section and prescribing the form and content of any circular, report or other document required to be delivered or filed.

Commence-

16. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

17. The short title of this Act is the Securities Amendment Act, 1987.

Publication

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 157

An Act to amend the Pension Benefits Act

Mr. Gordon



1st Reading
2nd Reading

November 25th, 1986

3rd Reading

Royal Assent

EXPLANATORY NOTE

The Bill amends the *Pension Benefits Act* to ensure that the Pension Commission of Ontario is represented equally by representatives of the points of view of labour, business and government.

It also amends the Act to provide that an employer cannot remove any surplus from a pension plan or decrease payments into a plan because of the existence of a surplus.

Bill 157 1986

An Act to amend the Pension Benefits Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Section 2 of the Pension Benefits Act, being chapter 373 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:
- (4) The Lieutenant Governor in Council shall appoint Tripartite members to the Commission in such a way that the Commission is represented to the greatest extent possible equally by members representing the points of view of labour unions, of employers who maintain pension plans and of government.

- 2. The said Act is amended by adding thereto the following section:
- **23a.**—(1) The assets and earnings of a pension plan shall Assets of be deemed to be held for the exclusive purposes of providing benefits to members and their beneficiaries and defraying rea- members sonable expenses of administering the plan and no part of those assets or earnings shall be paid to the benefit of the employer either during the term of the pension plan or upon its termination or winding up.

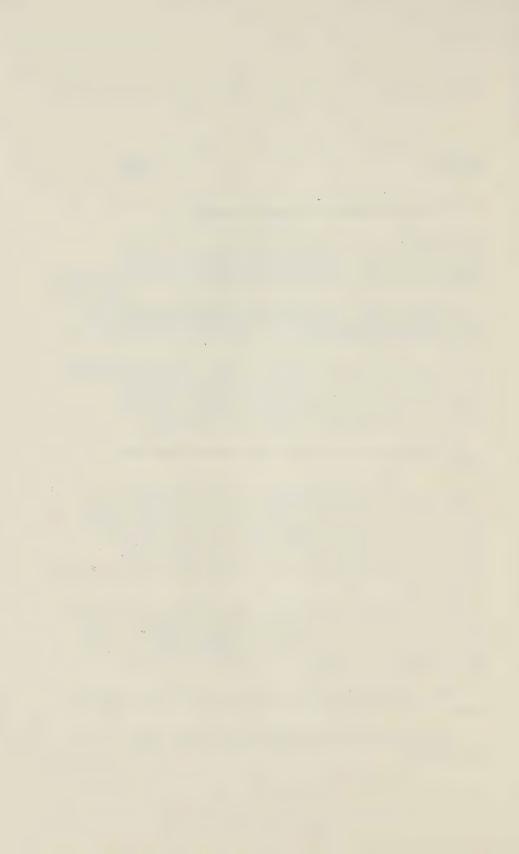
(2) An employer is not relieved of the obligation to pay Contributions money into a pension plan by reason only that the assets and earnings of the pension plan exceed its anticipated liabilities, standing unless the terms of the pension plan specifically provide that this subsection does not apply.

to continue, notwithsurplus

3. This Act comes into force on the day it receives Royal Assent.

Commencement

4. The short title of this Act is the Pension Benefits Amend- Short title ment Act, 1986.



Government

Government Bill

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 158

An Act to continue The Canadian Insurance Exchange

The Hon. M. Kwinter

Minister of Financial Institutions



1st Reading

November 26th, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

The Bill continues The Canadian Insurance Exchange which was incorporated by letters patent on the 12th day of June, 1986. In addition, it sets out the object and powers of that Corporation, establishes a board of directors and provides a mechanism for regulating the operation of the exchange.

The other main features of the Bill are as follows:

- 1. Membership on the exchange is limited to underwriting syndicates and brokers.
- 2. Underwriting managers may act on behalf of syndicates but must be registered with the Corporation.
- 3. The Superintendent of Insurance has general supervisory power over the operation of the exchange.
- Security funds are required to be established for the protection of policyholders.
- 5. The general framework is established by the Bill with the details of the operation to be governed by the by-laws of the Corporation and the Lieutenant Governor in Council in so far as it is considered necessary may intervene to protect the public interest.

Bill 158 1986

An Act to continue The Canadian Insurance Exchange

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

- "board" means the board of directors of the Corporation;
- "broker" means a member of the exchange authorized by the board to place insurance on the exchange;
- "by-laws" means the by-laws of the Corporation and orders made under section 14 and includes rules and directions made under the by-laws;
- "Corporation" means The Canadian Insurance Exchange constituted by letters patent under the Corporations Act dated R.S.O. 1980, the 12th day of June, 1986 and continued under this Act;

- "exchange" means a centralized market facility operated by the Corporation for placing of insurance risks, including reinsurance, with syndicates, either alone, with other syndicates or other insurers, to share the risks for a price negotiated within the facility;
- "insurance" means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of a certain event and includes life insurance;
- "Minister" means the Minister of Financial Institutions or other such member of the Executive Council to whom the administration of this Act may be assigned;
- "Ministry" means Ministry of the Minister;

"person" includes a syndicate;

"prescribed" means prescribed by the regulations;

"regulations" means regulations made under this Act;

"Superintendent" means the Superintendent of Insurance R.S.O. 1980, appointed under the *Insurance Act*;

"syndicate" means an underwriting member of the exchange.

Corporation continued R.S.O. 1980, c. 95

2.—(1) The Canadian Insurance Exchange incorporated by letters patent under the *Corporations Act* dated the 12th day of June, 1986 is continued as a corporation without share capital under the name "The Canadian Insurance Exchange".

Name in other language

(2) The Corporation may have in its by-laws a provision setting out its name in any language and the Corporation may be legally designated by that name.

Head office

3. The head office of the Corporation and the exchange operated by the Corporation shall be located in The Municipality of Metropolitan Toronto.

Object

4.—(1) The object of the Corporation is to operate the exchange for the placing and underwriting of insurance by its members.

Non-profit

(2) The Corporation shall be carried on without the purpose of gain for the benefit of its members and any profits or other accretions to the Corporation shall be used in promoting its object.

Powers

- 5. The Corporation may do all things necessary or incidental to its object and, without limiting the generality of the foregoing, the Corporation may,
 - (a) borrow money on the credit of the Corporation;
 - (b) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the Corporation, owned or subsequently acquired, to secure any obligation of the Corporation; and
 - (c) acquire by purchase, lease or otherwise, and hold, for any period of time, land or interest therein whether or not the land or interest is necessary for its actual use or occupation or for carrying on its undertaking and may sell, charge, lease or other-

wise deal with or dispose of land or any interest therein.

- 6.—(1) The affairs of the Corporation shall be managed by Board of the board of directors consisting of,
 - (a) directors elected by the syndicates;
 - (b) directors elected by the brokers; and
 - (c) public directors appointed by the Lieutenant Governor in Council.
- (2) The by-laws shall set out the number of directors to be Idem elected under each of clauses (1) (a) and (b) and to be appointed under clause (1) (c) but the number of public directors shall be not less than 25 per cent of the total number of directors.
- (3) It is not necessary that all directors elected hold office Term of for the same term.
- (4) A majority of the members of the board constitutes a quorum.
- (5) Notwithstanding any vacancy in the board, the remain- Vacancies ing directors may exercise all the powers of the board so long as a quorum of the board remains in office.

7.—(1) The directors, other than the public directors, shall Election of be elected by the members at any general or special meeting of the Corporation in such manner, including by rotation or otherwise, as the by-laws provide.

(2) The public directors shall be appointed by the Lieuten-Appointment ant Governor in Council for a period not exceeding three years.

- (3) No person employed or otherwise associated with a Eligibility of public member of the Corporation is eligible to be a public director. directors
- (4) The directors of the Corporation in office immediately Continuation before this Act comes into force shall be deemed to be the directors elected under subsection (1) and shall remain in office until the members elect the directors in accordance with subsection (5).

(5) The directors referred to in subsection (4) shall call a First meeting of the members within six months after this Act

of directors

comes into force for the purpose of electing the board in accordance with this Act and the by-laws.

Chairman, vice-chairman

8. The chairman and every vice-chairman of the board shall be elected by the board from among the directors and either the chairman or one of the vice-chairmen shall be a public director.

President

9.—(1) The president of the Corporation shall be appointed by the board and may, but need not, be a director.

Disqualification (2) No person employed or otherwise associated with a member of the Corporation is eligible to be president.

Duties of the president

(3) The president shall be the chief executive officer of the Corporation.

Removal

(4) The president may be removed from office by the board upon a vote of two-thirds of the directors.

Appointment of officers

10.—(1) Every officer of the Corporation, except the chairman and any vice-chairman of the board and the president, shall be appointed by the president with the approval of the board.

Officer not to be director

(2) No officer of the Corporation, except the chairman and any vice-chairman of the board and the president, may be a director of the Corporation.

Indemnity of directors and officers

- (3) Every director and officer of the Corporation and his or her heirs, executors and administrators and estate and effects respectively shall be indemnified and saved harmless by the Corporation from and against,
 - (a) all costs, charges and expenses whatsoever that he or she sustains or incurs in or about any action, suit or proceeding that is brought, commenced or prosecuted against him or her, by or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by him or her, in or about the execution of the duties of his office; and
 - (b) all other costs, charges and expenses that he or she sustains or incurs in or about or in relation to the affairs thereof,

except such costs, charges or expenses as are occasioned by his or her own wilful neglect or default.

(4) The Corporation may purchase and maintain insurance Insurance for the benefit of a director or officer except insurance against a liability, cost, charge or expense incurred as a result of his or her failure to act honestly and in good faith with a view to the best interests of the Corporation.

11.—(1) For the purposes of the object of the Corpora-Powers of tion, the board has the power to govern and regulate.

the board

- (a) the exchange;
- (b) the members and underwriting managers including their internal arrangements;
- (c) the business conduct of members and underwriting managers and their employees and agents and other persons associated with them in the conduct of busi-
- (d) the business or kind of business that members may conduct on the exchange and the terms under which any business may be conducted,

and, in the exercise of such powers and in addition to its power to pass by-laws under Part III of the Corporations Act, R.S.O. 1980, the board may pass such by-laws and make such rules and issue such orders and directions pursuant to the by-laws as it considers necessary, including the imposition of fines and other penalties for the breach of any by-law, rule, direction or order

(2) If the board passes a by-law that provides for the mak-By-law ing of an order restricting or suspending the privileges of any privileges member, underwriting manager or employee, agent or other person associated with a member or manager in the conduct of business before a hearing of the matter is held, the by-law shall provide that any restriction or suspension may be imposed only where the board considers it necessary for the protection of the public interest and that the restriction or suspension expires fifteen days after the order was made unless a hearing is held within that time to confirm or set aside the order.

(3) The board may pass by-laws delegating to one or more Delegation persons or committees the power of the board.

(a) to consider, hold hearings and make determinations regarding applications for any acceptance, approval, registration or authorization and to impose conditions on any such acceptance, approval, registration or authorization:

- (b) to investigate and examine the business conduct of members and underwriting managers and their employees and agents and other persons associated with them in the conduct of business related to the exchange; and
- (c) to hold hearings, make determinations and impose discipline, including fines and other penalties, on persons referred to in clause (b) in matters related to business conduct.

subject to such restrictions, conditions and requirements as the board may set out in the by-laws.

By-laws come into force

(4) By-laws passed by the board come into force on being approved in writing by the Superintendent.

R.S.O. 1980, c. 446 does not apply (5) By-laws are not regulations within the meaning of the *Regulations Act*.

Meeting by telephone, etc.

- **12.**—(1) A meeting of the board or of any committee established by the board may be held by means of telephone, electronic or other communication facilities if.
 - (a) the telephone, electronic or other communication facilities permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously; and
 - (b) all of the participants in the meeting consent.

Idem

(2) Every person participating in a meeting described in subsection (1) shall be deemed to be present at the meeting.

Records

(3) The books and records of the Corporation may be kept in a bound or looseleaf book or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device.

Admissibility of records

(4) The bound or looseleaf book or, where the record is not kept in a looseleaf book, the information in the form in which it is available under subsection (3) is admissible as evidence, in the absence of evidence to the contrary, of the facts stated therein.

Application of R.S.O. 1980, c. 95

13. The *Corporations Act*, except sections 131, 275, 276, 312 and 313, applies to the Corporation, except,

- (a) to the extent that the provisions thereof are inconsistent with this Act:
- (b) that a public director may not be removed from office under section 67 of that Act; and
- (c) such other provision as may be prescribed.
- 14.—(1) The Lieutenant Governor in Council may by Orders by order exercise any power in the public interest that the board may exercise.
- (2) Where there is an inconsistency between any order Order made under subsection (1) and any by-law passed by the board, the order shall prevail.
- 15.—(1) The Superintendent may direct to the Corpora- Inquiries by tion, its members and underwriting managers and their superinemployees, agents and other persons associated with them any inquiry respecting the conduct of their business.
- (2) Every person to whom an inquiry is directed under sub- Idem section (1) shall make prompt and explicit answers to the inquiry.
- **16.**—(1) The Superintendent and every person authorized Access to in writing for the purpose by the Superintendent shall at all times have access to all the books, records, securities and documents, whether stored electronically or otherwise, of all persons to whom an inquiry may be directed under section 15 that relate directly or indirectly to business involving the exchange.

documents

- (2) Every person in charge, possession, custody or control Idem of books, records, securities or documents to which access is provided under subsection (1) shall ensure that access is provided.
- 17.—(1) Where upon a statement made under oath it Investigation appears probable to the Superintendent that any person has contravened any of the provisions of this Act or the regulations, the Superintendent by order may appoint any person to make such investigation as the Superintendent considers expedient for the due administration and enforcement of this Act and, in the order, shall determine the scope of the investigation.

(2) For the purpose of any investigation ordered under this Scope of section, the person appointed to make the investigation may investigate, inquire into and examine,

- (a) the affairs of the person in respect of whom the investigation is being made and any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with the person and any property, assets or things owned, acquired or alienated, in whole or in part, by the person or by any person acting on behalf of or as agent for the person; and
- (b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with the person and the relationship that may at any time exist or have existed between the person and any other person by reason of investments, purchases, commissions promised, secured or paid, interests held or acquired, purchase or sale of stock or other property, the transfer, negotiation or holding of stock, interlocking directorates, common control, undue influence or control or any other relationship.

Powers to summon witnesses and require production (3) The person making an investigation under this section has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court for the trial of civil actions, and the failure or refusal of a person to attend, to answer questions or to produce such documents, records and things as are in the person's custody or possession makes the person liable to be committed for contempt by a judge of the Supreme Court as if in breach of an order or judgment of the Supreme Court and no provision of the *Evidence Act* exempts any bank or loan or trust corporation or any officer or employee thereof from the operation of this section.

R.S.O. 1980, c. 145

(4) A person giving evidence at an investigation under this section may be represented by counsel.

Counsel

Seizure of

property

(5) Where an investigation is ordered under this section, the person appointed to make the investigation may seize and take possession of any documents, records, securities or other property of the person whose affairs are being investigated.

Inspection of seized documents

(6) Where any documents, records, securities or other property are seized under subsection (5), the documents, records, securities or other property shall be made available for inspection and copying by the person from whom seized at a

mutually convenient time and place if a request for an opportunity to inspect or copy is made by that person to the person appointed to make the investigation.

CANADIAN INSURANCE EXCHANGE

(7) Where an investigation is ordered under this section, Accountants the Superintendent may appoint an accountant or other expert to examine documents, records, property and matters of the person whose affairs are being investigated.

(8) Every person appointed under subsection (1) or (7) shall provide the Superintendent with a full and complete report of the investigation including any transcript of evidence and material in his or her possession relating to the investigation.

Reports of investigation

18.—(1) The Corporation shall, within two months after Annual each financial year, provide to its members and the Superintendent an annual report relating to its activities in that year, including,

- (a) financial statements of the Corporation and the auditor's report thereon;
- (b) consolidated financial statements of the business conducted on the exchange in such form as is approved by the Superintendent;
- (c) any other information considered relevant by the Corporation or requested by the Superintendent.
- (2) The Superintendent shall report annually to the Minis-Report to ter on the affairs of the Corporation.
- 19.—(1) Subject to section 20, no person who is not a Members member of the exchange shall directly or indirectly,
 - (a) carry on business on or through the exchange; or
 - (b) hold itself out as being a member of the exchange.
- (2) Every person who is a member of the Corporation may Idem carry on business on or through the exchange only in accordance with this Act, the regulations and the by-laws.
- 20.—(1) Every person registered with the Corporation as Managers an underwriting manager may act on behalf of any syndicate in transacting business on or through the exchange in accordance with this Act, the regulations and the by-laws.

Idem

(2) The Corporation may register underwriting managers to manage and underwrite risks on behalf of one or more syndicates.

Idem

(3) No person shall directly or indirectly act or purport to act on behalf of any syndicate as an underwriting manager unless the person is registered under this section.

Syndicates require licences **21.**—(1) No syndicate shall carry on business on or through the exchange without a licence for the purpose issued by the Superintendent.

Entitlement to licence (2) Every syndicate that satisfies the Superintendent that it is approved for membership in the Corporation, has complied with the Act and the regulations, has paid the prescribed fee and has met the prescribed conditions and that provides such additional information as the Superintendent may require is entitled to be issued a licence.

Conditions

(3) The Superintendent, in issuing a licence, may make the licence subject to such conditions and limitations as the Superintendent considers to be in the public interest.

Term

(4) The term of every licence shall be one year or such other term as is prescribed.

Cancellation

(5) Where a syndicate ceases to be a member of the Corporation, the licence of that syndicate is thereupon cancelled.

Limitation

(6) No syndicate shall carry on business except on or through the exchange.

Paying cost of examination

(7) When the Superintendent considers it necessary to conduct an examination of the affairs of an applicant for a licence, the applicant shall pay the costs of the examination upon receiving a statement thereof certified by the Superintendent.

Changes to licences

22.—(1) The Superintendent may, at any time, in respect of any licence issued under section 21,

- (a) reduce the term for which the licence was issued;
- (b) attach any condition or limitation relating to the carrying on of syndicate business that the Superintendent considers appropriate; or
- (c) amend or revoke any condition or limitation to which the licence is subject.

- (2) Before effecting a change to a licence under subsection Idem (1), the Superintendent shall give the licensee notice of an intention to make the change and shall afford the licensee an opportunity to be heard.
- (3) Notwithstanding subsection (2), the Superintendent Idem may, without affording the licensee an opportunity to be heard, attach any condition or limitation on a licence that has been imposed on the licensee's membership in the Corporation
- 23.—(1) Sections 10 and 11 of the *Insurance Act* apply to Application applications for licences under section 21 of this Act and to R.S.O. 1980. changes made to a licence under section 22 of this Act as if c. 218 the applicant or licensee, as the case may be, were an applicant for a licence under that Act.
- (2) Part I of the Insurance Act, except sections 14, 16 and 19, applies to syndicates as if they were insurers licensed under that Act and the Superintendent has the same powers and duties with respect to syndicates as are granted to and imposed on the Superintendent under the said Part I.

R.S.O. 1980,

(3) Except as otherwise prescribed, syndicates shall be Insurers deemed to be insurers for the purpose of the *Insurance Act*.

R.S.O. 1980. c. 218

(4) In performing duties under Part I of the *Insurance Act*, the Superintendent may accept or adopt any inspection, examination, statement or report prepared by the Corporation with respect to the affairs of any syndicate if the Superintendent considers it appropriate to do so.

Adoption of reports, etc.

- (5) Where the Superintendent incurs cost in conducting an Cost inspection or examination of a syndicate under Part I of the Insurance Act, the cost may be charged to the Corporation and, where it is so charged, the Corporation is liable for the cost.
- 24.—(1) Every syndicate shall prepare annually and Annual deliver to the Superintendent on or before the last day of February of each year a statement as to the affairs of the syndicate in such form as the Superintendent may require.
- (2) For the purposes of subsection (1), the Superintendent Idem may accept a report on the affairs of a syndicate prepared by the Corporation and such report may be in a form set out by by-law.

Change in control

(3) Except as prescribed, notice of every change of control of a syndicate shall be given by the syndicate to the Superintendent at least thirty days before the change.

Cease and refrain order

- 25.—(1) Where the Superintendent believes, on reasonable grounds, that any person is committing an act or pursuing a course of conduct, or is about to commit an act or pursue a course of conduct in respect of that person's business on or through the exchange that is an unsound business practice, the Superintendent may give notice of an intention to order the person to,
 - (a) cease or refrain from doing the act or pursuing the course of conduct;
 - (b) perform such acts as, in the opinion of the Superintendent, are necessary to remedy the situation; or
 - (c) cease or refrain from doing the act or pursuing the course of conduct and to perform such acts as, in the opinion of the Superintendent, are necessary to remedy the situation.

Hearing

(2) Any person receiving notice of intention under subsection (1) may require a hearing before the Superintendent by serving the Superintendent, within fifteen days after receiving the notice, with a request for a hearing.

Idem

(3) Where a request for a hearing is served in accordance with subsection (2), the Superintendent shall hold a hearing.

Immediate order (4) Where, in the opinion of the Superintendent, any delay in the issuance of an order proposed under subsection (1) would be prejudicial to the public interest to a significant extent, the Superintendent may make an order proposed to take effect immediately on its making.

Order

(5) Where a hearing is not requested under this section or where a hearing is held and the Superintendent remains of the opinion that the order proposed should be made, the Superintendent may make the order to take effect immediately on its making or at such later date as may be set out in the order.

Idem

(6) Where an immediate order is made under subsection (4) and a hearing is requested, the Superintendent shall hold the hearing as soon as reasonably possible and shall revoke the order after the hearing unless the Superintendent is satisfied that the order should remain.

(7) Subsection 11 (1) of the *Insurance Act* does not apply in Nonrespect of an order made under this section if the person to application of whom the order was directed did not request a hearing.

R.S.O. 1980,

(8) Notwithstanding that an appeal is taken under this sec-Stay tion, the decision appealed from takes effect immediately, but the Divisional Court may grant a stay until disposition of the appeal.

26. Where it appears to the Superintendent that any per- Court order son has failed to comply with or is violating any provision of this Act, the regulations or a by-law or of an order made under this Act, the Superintendent may, notwithstanding the imposition of any penalty in respect of such non-compliance or violation and in addition to any other rights that the Superintendent may have, apply to a judge of the High Court for an order.

- (a) directing that the person comply with the provision or order or stop violating the provision or order; and
- (b) where the person is not an individual, directing the directors and officers of the person to comply with the provision or order or stop violating the provision or order.

and, upon the application, the judge may make the order requested or such other order as the judge thinks appropriate.

27.—(1) If the Superintendent is of the opinion that the Cancellation assets of a syndicate are insufficient to justify its continuance in business or to provide proper security to persons effecting insurance with it in Ontario or that it has failed to comply with any law to the detriment or potential detriment of the public interest, the Superintendent may cancel the licence of the syndicate.

(2) Before a licence is cancelled under subsection (1), the Hearing Superintendent shall give the syndicate notice of the intention and an opportunity to be heard.

- (3) Any decision to cancel a licence under this section may Appeal be appealed to the Divisional Court.
- (4) Notwithstanding that an appeal is taken under this sec- Stay tion, the decision appealed from takes effect immediately, but the Divisional Court may grant a stay until disposition of the appeal.

Security fund: Corporation **28.**—(1) The Corporation shall establish and maintain security funds to be held in trust for the benefit of policyholders and insureds of syndicates to protect the policyholders and insureds from default by any syndicate.

syndicate

(2) Every syndicate, as a condition of maintaining membership in the Corporation, shall deposit assets in an amount determined by the board by by-law to be held in trust for the purposes of the security fund.

board of

(3) A board of trustees shall be established as prescribed to oversee the administration of the security funds.

rules

(4) The Corporation shall make rules pertaining to assessments, the methods of funding the security funds, including surcharges on premiums, the investment of the trust funds, the rights of syndicates with respect to their deposits under subsection (2) and the payment of claims of policyholders and insureds out of the security fund.

Investing money **29.**—(1) Subject to subsection (2), syndicates may invest money in the same manner and subject to the same limitations as an Ontario incorporated joint-stock insurance company.

Idem

(2) No syndicate may invest in another syndicate.

Offence

- **30.**—(1) Every person who,
 - (a) provides false information in any application under this Act or in any statement, return or answer required to be furnished under this Act or the regulations;
 - (b) fails to comply with any order or direction made under or other requirement of this Act or the regulations; or
 - (c) contravenes any provision of this Act or the regulations,

is guilty of an offence and on conviction is liable to a fine of not more than \$100,000 or to imprisonment for a term of not more than one year or to both.

Idem

(2) Where a body corporate is guilty of an offence under subsection (1), every director or officer of the body corporate who, without reasonable cause, authorized, permitted or acquiesced in the offence is also guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to

imprisonment for a term of not more than one year or to both.

- (3) No proceeding under this Act shall be commenced Limitation more than two years after the facts upon which the proceedings are based first came to the knowledge of the Superintendent as certified by the Superintendent.
- 31.—(1) The Lieutenant Governor in Council may make Regulations regulations.
 - (a) requiring the payment of fees by the Corporation and members in respect of any function performed by the Superintendent under this Act and prescribing the amounts thereof;
 - requiring reports to be filed with the Superintendent by any person or class of persons, prescribing when reports shall be filed and the information to be included in the reports;
 - (c) governing the board of trustees including the constitution of the board of trustees and qualification for membership:
 - exempting the Corporation, any member or class of member from any provision of this Act or the regulations or of any other Act or regulations under any other Act:
 - (e) making the Corporation, any member or any class of member subject to any Act or the regulations thereunder or any provision thereof;
 - (f) respecting any matter referred to as prescribed by the regulations.
- (2) Any regulation may be general or particular in its appli-Scope of regulations cation.
- **32.**—(1) Clause 390 (a) of the *Insurance Act*, being chapter 218 of the Revised Statutes of Ontario, 1980, is amended by adding at the end thereof "except for investments in the shares of a syndicate that is a member of The Canadian Insurance Exchange".
- (2) Clause 393 (a) of the said Act is amended by inserting after "Lloyds" in the fourth line "The Canadian Insurance Exchange and its members".

33. Section 141 of the *Corporations Act*, being chapter 95 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

Syndicates excluded

(4) Corporations incorporated for the sole purpose of participating in or constituting a syndicate operating on The Canadian Insurance Exchange are not insurers within the meaning of subsection (1).

Commencement **34.** This Act comes into force on the day it receives Royal Assent.

Short title

35. The short title of this Act is the *Canadian Insurance Exchange Act, 1986.*





2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 158

(Chapter 70 Statutes of Ontario, 1986)

An Act to continue The Canadian Insurance Exchange

The Hon. M. Kwinter *Minister of Financial Institutions*

1st Reading November 26th, 1986

2nd Reading December 17th, 1986

3rd Reading December 18th, 1986

Royal Assent December 18th, 1986



Bill 158 1986

An Act to continue The Canadian Insurance Exchange

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act.

Definitions

- "board" means the board of directors of the Corporation;
- "broker" means a member of the exchange authorized by the board to place insurance on the exchange;
- "by-laws" means the by-laws of the Corporation and orders made under section 14 and includes rules and directions made under the by-laws;
- "Corporation" means The Canadian Insurance Exchange constituted by letters patent under the *Corporations Act* dated the 12th day of June, 1986 and continued under this Act;
- "exchange" means a centralized market facility operated by the Corporation for placing of insurance risks, including reinsurance, with syndicates, either alone, with other syndicates or other insurers, to share the risks for a price negotiated within the facility;
- "insurance" means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of a certain event and includes life insurance;
- "Minister" means the Minister of Financial Institutions or other such member of the Executive Council to whom the administration of this Act may be assigned;
- "Ministry" means Ministry of the Minister;

"person" includes a syndicate;

"prescribed" means prescribed by the regulations;

"regulations" means regulations made under this Act;

"Superintendent" means the Superintendent of Insurance R.S.O. 1980, appointed under the *Insurance Act*;

"syndicate" means an underwriting member of the exchange.

Corporation continued R.S.O. 1980, c. 95

2.—(1) The Canadian Insurance Exchange incorporated by letters patent under the *Corporations Act* dated the 12th day of June, 1986 is continued as a corporation without share capital under the name "The Canadian Insurance Exchange".

Name in other language

(2) The Corporation may have in its by-laws a provision setting out its name in any language and the Corporation may be legally designated by that name.

Head office

3. The head office of the Corporation and the exchange operated by the Corporation shall be located in The Municipality of Metropolitan Toronto.

Object

4.—(1) The object of the Corporation is to operate the exchange for the placing and underwriting of insurance by its members.

Non-profit

(2) The Corporation shall be carried on without the purpose of gain for the benefit of its members and any profits or other accretions to the Corporation shall be used in promoting its object.

Powers

- 5. The Corporation may do all things necessary or incidental to its object and, without limiting the generality of the foregoing, the Corporation may,
 - (a) borrow money on the credit of the Corporation;
 - (b) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the Corporation, owned or subsequently acquired, to secure any obligation of the Corporation; and
 - (c) acquire by purchase, lease or otherwise, and hold, for any period of time, land or interest therein whether or not the land or interest is necessary for its actual use or occupation or for carrying on its undertaking and may sell, charge, lease or other-

wise deal with or dispose of land or any interest therein.

- **6.**—(1) The affairs of the Corporation shall be managed by Board of the board of directors consisting of,
 - (a) directors elected by the syndicates;
 - (b) directors elected by the brokers; and
 - (c) public directors appointed by the Lieutenant Governor in Council.
- (2) The by-laws shall set out the number of directors to be Idem elected under each of clauses (1) (a) and (b) and to be appointed under clause (1) (c) but the number of public directors shall be not less than 25 per cent of the total number of directors.
- (3) It is not necessary that all directors elected hold office Term of for the same term.
- (4) A majority of the members of the board constitutes a Quorum quorum.
- (5) Notwithstanding any vacancy in the board, the remain- Vacancies ing directors may exercise all the powers of the board so long as a quorum of the board remains in office.
- 7.—(1) The directors, other than the public directors, shall Election of directors be elected by the members at any general or special meeting of the Corporation in such manner, including by rotation or otherwise, as the by-laws provide.
- (2) The public directors shall be appointed by the Lieuten-Appointment of directors ant Governor in Council for a period not exceeding three vears.
- (3) No person employed or otherwise associated with a Eligibility of public member of the Corporation is eligible to be a public director. directors
- (4) The directors of the Corporation in office immediately Continuation before this Act comes into force shall be deemed to be the directors elected under subsection (1) and shall remain in office until the members elect the directors in accordance with subsection (5).
- (5) The directors referred to in subsection (4) shall call a First meeting of the members within six months after this Act

comes into force for the purpose of electing the board in accordance with this Act and the by-laws.

Chairman, vice-chairman

8. The chairman and every vice-chairman of the board shall be elected by the board from among the directors and either the chairman or one of the vice-chairmen shall be a public director.

President

9.—(1) The president of the Corporation shall be appointed by the board and may, but need not, be a director.

Disqualification (2) No person employed or otherwise associated with a member of the Corporation is eligible to be president.

Duties of the president

(3) The president shall be the chief executive officer of the Corporation.

Removal

(4) The president may be removed from office by the board upon a vote of two-thirds of the directors.

Appointment of officers

10.—(1) Every officer of the Corporation, except the chairman and any vice-chairman of the board and the president, shall be appointed by the president with the approval of the board.

Officer not to be director

(2) No officer of the Corporation, except the chairman and any vice-chairman of the board and the president, may be a director of the Corporation.

Indemnity of directors and officers

- (3) Every director and officer of the Corporation and his or her heirs, executors and administrators and estate and effects respectively shall be indemnified and saved harmless by the Corporation from and against,
 - (a) all costs, charges and expenses whatsoever that he or she sustains or incurs in or about any action, suit or proceeding that is brought, commenced or prosecuted against him or her, by or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by him or her, in or about the execution of the duties of his office; and
 - (b) all other costs, charges and expenses that he or she sustains or incurs in or about or in relation to the affairs thereof.

except such costs, charges or expenses as are occasioned by his or her own wilful neglect or default.

(4) The Corporation may purchase and maintain insurance Insurance for the benefit of a director or officer except insurance against a liability, cost, charge or expense incurred as a result of his or her failure to act honestly and in good faith with a view to the best interests of the Corporation.

11.—(1) For the purposes of the object of the Corpora-Powers of tion, the board has the power to govern and regulate,

- (a) the exchange;
- (b) the members and underwriting managers including their internal arrangements;
- the business conduct of members and underwriting (c) managers and their employees and agents and other persons associated with them in the conduct of business:
- (d) the business or kind of business that members may conduct on the exchange and the terms under which any business may be conducted.

and, in the exercise of such powers and in addition to its power to pass by-laws under Part III of the Corporations Act, the board may pass such by-laws and make such rules and issue such orders and directions pursuant to the by-laws as it considers necessary, including the imposition of fines and other penalties for the breach of any by-law, rule, direction or order.

R.S:O. 1980,

(2) If the board passes a by-law that provides for the mak-By-law ing of an order restricting or suspending the privileges of any privileges member, underwriting manager or employee, agent or other person associated with a member or manager in the conduct of business before a hearing of the matter is held, the by-law shall provide that any restriction or suspension may be imposed only where the board considers it necessary for the protection of the public interest and that the restriction or suspension expires fifteen days after the order was made unless a hearing is held within that time to confirm or set aside the order.

- (3) The board may pass by-laws delegating to one or more Delegation persons or committees the power of the board,
 - (a) to consider, hold hearings and make determinations regarding applications for any acceptance, approval, registration or authorization and to impose condi-

tions on any such acceptance, approval, registration or authorization;

- (b) to investigate and examine the business conduct of members and underwriting managers and their employees and agents and other persons associated with them in the conduct of business related to the exchange; and
- (c) to hold hearings, make determinations and impose discipline, including fines and other penalties, on persons referred to in clause (b) in matters related to business conduct.

subject to such restrictions, conditions and requirements as the board may set out in the by-laws.

By-laws come into force

(4) By-laws passed by the board come into force on being approved in writing by the Superintendent.

R.S.O. 1980, c. 446 does not apply (5) By-laws are not regulations within the meaning of the *Regulations Act*.

Meeting by telephone, etc.

- **12.**—(1) A meeting of the board or of any committee established by the board may be held by means of telephone, electronic or other communication facilities if,
 - (a) the telephone, electronic or other communication facilities permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously; and
 - (b) all of the participants in the meeting consent.

Idem

(2) Every person participating in a meeting described in subsection (1) shall be deemed to be present at the meeting.

Records

(3) The books and records of the Corporation may be kept in a bound or looseleaf book or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device.

Admissibility of records

(4) The bound or looseleaf book or, where the record is not kept in a looseleaf book, the information in the form in which it is available under subsection (3) is admissible as evidence, in the absence of evidence to the contrary, of the facts stated therein.

Application of R.S.O. 1980,

13. The *Corporations Act*, except sections 131, 275, 276, 312 and 313, applies to the Corporation, except,

- (a) to the extent that the provisions thereof are inconsistent with this Act:
- (b) that a public director may not be removed from office under section 67 of that Act; and
- (c) such other provision as may be prescribed.
- 14.—(1) The Lieutenant Governor in Council may by Orders by order exercise any power in the public interest that the board may exercise.
- (2) Where there is an inconsistency between any order Order made under subsection (1) and any by-law passed by the board, the order shall prevail.
- 15.—(1) The Superintendent may direct to the Corpora- Inquiries by tion, its members and underwriting managers and their superintendent employees, agents and other persons associated with them any inquiry respecting the conduct of their business.
- (2) Every person to whom an inquiry is directed under sub- Idem section (1) shall make prompt and explicit answers to the inquiry.
- **16.**—(1) The Superintendent and every person authorized Access to in writing for the purpose by the Superintendent shall at all times have access to all the books, records, securities and documents, whether stored electronically or otherwise, of all persons to whom an inquiry may be directed under section 15 that relate directly or indirectly to business involving the exchange.

(2) Every person in charge, possession, custody or control Idem of books, records, securities or documents to which access is provided under subsection (1) shall ensure that access is provided.

17.—(1) Where upon a statement made under oath it Investigation appears probable to the Superintendent that any person has contravened any of the provisions of this Act or the regulations, the Superintendent by order may appoint any person to make such investigation as the Superintendent considers expedient for the due administration and enforcement of this Act and, in the order, shall determine the scope of the investigation.

(2) For the purpose of any investigation ordered under this Scope of section, the person appointed to make the investigation may investigate, inquire into and examine,

- (a) the affairs of the person in respect of whom the investigation is being made and any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with the person and any property, assets or things owned, acquired or alienated, in whole or in part, by the person or by any person acting on behalf of or as agent for the person; and
- (b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with the person and the relationship that may at any time exist or have existed between the person and any other person by reason of investments, purchases, commissions promised, secured or paid, interests held or acquired, purchase or sale of stock or other property, the transfer, negotiation or holding of stock, interlocking directorates, common control, undue influence or control or any other relationship.

Powers to summon witnesses and require production (3) The person making an investigation under this section has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court for the trial of civil actions, and the failure or refusal of a person to attend, to answer questions or to produce such documents, records and things as are in the person's custody or possession makes the person liable to be committed for contempt by a judge of the Supreme Court as if in breach of an order or judgment of the Supreme Court and no provision of the *Evidence Act* exempts any bank or loan or trust corporation or any officer or employee thereof from the operation of this section.

R.S.O. 1980, c. 145

(4) A person giving evidence at an investigation under this section may be represented by counsel.

Seizure of property

Counsel

(5) Where an investigation is ordered under this section, the person appointed to make the investigation may seize and take possession of any documents, records, securities or other property of the person whose affairs are being investigated.

Inspection of seized documents

(6) Where any documents, records, securities or other property are seized under subsection (5), the documents, records, securities or other property shall be made available for inspection and copying by the person from whom seized at a

mutually convenient time and place if a request for an opportunity to inspect or copy is made by that person to the person appointed to make the investigation.

(7) Where an investigation is ordered under this section. the Superintendent may appoint an accountant or other expert to examine documents, records, property and matters of the person whose affairs are being investigated.

Accountants

(8) Every person appointed under subsection (1) or (7) shall provide the Superintendent with a full and complete report of the investigation including any transcript of evidence and material in his or her possession relating to the investigation.

Reports of investigation

18.—(1) The Corporation shall, within two months after Annual each financial year, provide to its members and the Superintendent an annual report relating to its activities in that year, including,

- (a) financial statements of the Corporation and the auditor's report thereon;
- (b) consolidated financial statements of the business conducted on the exchange in such form as is approved by the Superintendent;
- (c) any other information considered relevant by the Corporation or requested by the Superintendent.
- Report to (2) The Superintendent shall report annually to the Minister on the affairs of the Corporation.
- 19.—(1) Subject to section 20, no person who is not a Members member of the exchange shall directly or indirectly,
 - (a) carry on business on or through the exchange; or
 - (b) hold itself out as being a member of the exchange.
- (2) Every person who is a member of the Corporation may Idem carry on business on or through the exchange only in accordance with this Act, the regulations and the by-laws.
- **20.**—(1) Every person registered with the Corporation as Managers an underwriting manager may act on behalf of any syndicate in transacting business on or through the exchange in accordance with this Act, the regulations and the by-laws.

Idem

(2) The Corporation may register underwriting managers to manage and underwrite risks on behalf of one or more syndicates.

Idem

(3) No person shall directly or indirectly act or purport to act on behalf of any syndicate as an underwriting manager unless the person is registered under this section.

Syndicates require licences **21.**—(1) No syndicate shall carry on business on or through the exchange without a licence for the purpose issued , by the Superintendent.

Entitlement to licence (2) Every syndicate that satisfies the Superintendent that it is approved for membership in the Corporation, has complied with the Act and the regulations, has paid the prescribed fee and has met the prescribed conditions and that provides such additional information as the Superintendent may require is entitled to be issued a licence.

Conditions

(3) The Superintendent, in issuing a licence, may make the licence subject to such conditions and limitations as the Superintendent considers to be in the public interest.

Term

(4) The term of every licence shall be one year or such other term as is prescribed.

Cancellation

(5) Where a syndicate ceases to be a member of the Corporation, the licence of that syndicate is thereupon cancelled.

Limitation

(6) No syndicate shall carry on business except on or through the exchange.

Paying cost of examination

(7) When the Superintendent considers it necessary to conduct an examination of the affairs of an applicant for a licence, the applicant shall pay the costs of the examination upon receiving a statement thereof certified by the Superintendent.

Changes to licences

22.—(1) The Superintendent may, at any time, in respect of any licence issued under section 21,

- (a) reduce the term for which the licence was issued;
- (b) attach any condition or limitation relating to the carrying on of syndicate business that the Superintendent considers appropriate; or
- (c) amend or revoke any condition or limitation to which the licence is subject.

(2) Before effecting a change to a licence under subsection Idem (1), the Superintendent shall give the licensee notice of an intention to make the change and shall afford the licensee an opportunity to be heard.

(3) Notwithstanding subsection (2), the Superintendent Idem may, without affording the licensee an opportunity to be heard, attach any condition or limitation on a licence that has been imposed on the licensee's membership in the Corporation.

23.—(1) Sections 10 and 11 of the *Insurance Act* apply to Application applications for licences under section 21 of this Act and to R.S.O. 1980, changes made to a licence under section 22 of this Act as if c. 218 the applicant or licensee, as the case may be, were an applicant for a licence under that Act.

(2) Part I of the *Insurance Act*, except sections 14, 16 and ^{Idem} 19, applies to syndicates as if they were insurers licensed R.S.O. 1980, under that Act and the Superintendent has the same powers and duties with respect to syndicates as are granted to and imposed on the Superintendent under the said Part I.

(3) Except as otherwise prescribed, syndicates shall be Insurers deemed to be insurers for the purpose of the *Insurance Act*.

R.S.O. 1980, c. 218

(4) In performing duties under Part I of the *Insurance Act*, the Superintendent may accept or adopt any inspection, examination, statement or report prepared by the Corporation with respect to the affairs of any syndicate if the Superintendent considers it appropriate to do so.

Adoption of reports, etc.

(5) Where the Superintendent incurs cost in conducting an Cost inspection or examination of a syndicate under Part I of the Insurance Act, the cost may be charged to the Corporation and, where it is so charged, the Corporation is liable for the cost.

24.—(1) Every syndicate shall prepare annually and Annual deliver to the Superintendent on or before the last day of February of each year a statement as to the affairs of the syndicate in such form as the Superintendent may require.

(2) For the purposes of subsection (1), the Superintendent Idem may accept a report on the affairs of a syndicate prepared by the Corporation and such report may be in a form set out by by-law.

Change in

(3) Except as prescribed, notice of every change of control of a syndicate shall be given by the syndicate to the Superintendent at least thirty days before the change.

Cease and refrain order

- 25.—(1) Where the Superintendent believes, on reasonable grounds, that any person is committing an act or pursuing a course of conduct, or is about to commit an act or pursue a course of conduct in respect of that person's business on or through the exchange that is an unsound business practice, the Superintendent may give notice of an intention to order the person to,
 - (a) cease or refrain from doing the act or pursuing the course of conduct;
 - (b) perform such acts as, in the opinion of the Superintendent, are necessary to remedy the situation; or
 - (c) cease or refrain from doing the act or pursuing the course of conduct and to perform such acts as, in the opinion of the Superintendent, are necessary to remedy the situation.

Hearing

(2) Any person receiving notice of intention under subsection (1) may require a hearing before the Superintendent by serving the Superintendent, within fifteen days after receiving the notice, with a request for a hearing.

Idem

(3) Where a request for a hearing is served in accordance with subsection (2), the Superintendent shall hold a hearing.

Immediate order (4) Where, in the opinion of the Superintendent, any delay in the issuance of an order proposed under subsection (1) would be prejudicial to the public interest to a significant extent, the Superintendent may make an order proposed to take effect immediately on its making.

Order

(5) Where a hearing is not requested under this section or where a hearing is held and the Superintendent remains of the opinion that the order proposed should be made, the Superintendent may make the order to take effect immediately on its making or at such later date as may be set out in the order.

Idem

(6) Where an immediate order is made under subsection (4) and a hearing is requested, the Superintendent shall hold the hearing as soon as reasonably possible and shall revoke the order after the hearing unless the Superintendent is satisfied that the order should remain.

(7) Subsection 11 (1) of the *Insurance Act* does not apply in respect of an order made under this section if the person to whom the order was directed did not request a hearing.

application R.S.O. 1980,

(8) Notwithstanding that an appeal is taken under this sec-Stay tion, the decision appealed from takes effect immediately, but the Divisional Court may grant a stay until disposition of the appeal.

26. Where it appears to the Superintendent that any per- Court order son has failed to comply with or is violating any provision of this Act, the regulations or a by-law or of an order made under this Act, the Superintendent may, notwithstanding the imposition of any penalty in respect of such non-compliance or violation and in addition to any other rights that the Superintendent may have, apply to a judge of the High Court for an order.

- directing that the person comply with the provision or order or stop violating the provision or order; and
- (b) where the person is not an individual, directing the directors and officers of the person to comply with the provision or order or stop violating the provision or order.

and, upon the application, the judge may make the order requested or such other order as the judge thinks appropriate.

27.—(1) If the Superintendent is of the opinion that the Cancellation assets of a syndicate are insufficient to justify its continuance in business or to provide proper security to persons effecting insurance with it in Ontario or that it has failed to comply with any law to the detriment or potential detriment of the public interest, the Superintendent may cancel the licence of the syndicate.

(2) Before a licence is cancelled under subsection (1), the Hearing Superintendent shall give the syndicate notice of the intention and an opportunity to be heard.

- (3) Any decision to cancel a licence under this section may Appeal be appealed to the Divisional Court.
- (4) Notwithstanding that an appeal is taken under this sec- Stay tion, the decision appealed from takes effect immediately, but the Divisional Court may grant a stay until disposition of the appeal.

Security fund: Corporation **28.**—(1) The Corporation shall establish and maintain security funds to be held in trust for the benefit of policyholders and insureds of syndicates to protect the policyholders and insureds from default by any syndicate.

syndicate

(2) Every syndicate, as a condition of maintaining membership in the Corporation, shall deposit assets in an amount determined by the board by by-law to be held in trust for the purposes of the security fund.

board of trustees (3) A board of trustees shall be established as prescribed to oversee the administration of the security funds.

rules

(4) The Corporation shall make rules pertaining to assessments, the methods of funding the security funds, including surcharges on premiums, the investment of the trust funds, the rights of syndicates with respect to their deposits under subsection (2) and the payment of claims of policyholders and insureds out of the security fund.

Investing money

29.—(1) Subject to subsection (2), syndicates may invest money in the same manner and subject to the same limitations as an Ontario incorporated joint-stock insurance company.

Idem

(2) No syndicate may invest in another syndicate.

Offence

- **30.**—(1) Every person who,
 - (a) provides false information in any application under this Act or in any statement, return or answer required to be furnished under this Act or the regulations;
 - (b) fails to comply with any order or direction made under or other requirement of this Act or the regulations; or
 - (c) contravenes any provision of this Act or the regulations,

is guilty of an offence and on conviction is liable to a fine of not more than \$100,000 or to imprisonment for a term of not more than one year or to both.

Idem

(2) Where a body corporate is guilty of an offence under subsection (1), every director or officer of the body corporate who, without reasonable cause, authorized, permitted or acquiesced in the offence is also guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to

imprisonment for a term of not more than one year or to both

(3) No proceeding under this Act shall be commenced Limitation more than two years after the facts upon which the proceedings are based first came to the knowledge of the Superintendent as certified by the Superintendent.

- 31.—(1) The Lieutenant Governor in Council may make Regulations regulations,
 - requiring the payment of fees by the Corporation and members in respect of any function performed by the Superintendent under this Act and prescribing the amounts thereof;
 - requiring reports to be filed with the Superintendent by any person or class of persons, prescribing when reports shall be filed and the information to be included in the reports;
 - (c) governing the board of trustees including the constitution of the board of trustees and qualification for membership;
 - exempting the Corporation, any member or class of member from any provision of this Act or the regulations or of any other Act or regulations under any other Act:
 - making the Corporation, any member or any class of member subject to any Act or the regulations thereunder or any provision thereof;
 - respecting any matter referred to as prescribed by (f) the regulations.
- (2) Any regulation may be general or particular in its appli-Scope of regulations cation.
- **32.**—(1) Clause 390 (a) of the *Insurance Act*, being chapter 218 of the Revised Statutes of Ontario, 1980, is amended by adding at the end thereof "except for investments in the shares of a syndicate that is a member of The Canadian Insurance Exchange".
- (2) Clause 393 (a) of the said Act is amended by inserting after "Lloyds" in the fourth line "The Canadian Insurance Exchange and its members".

33. Section 141 of the *Corporations Act*, being chapter 95 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

Syndicates excluded

(4) Corporations incorporated for the sole purpose of participating in or constituting a syndicate operating on The Canadian Insurance Exchange are not insurers within the meaning of subsection (1).

Commencement **34.** This Act comes into force on the day it receives Royal Assent.

Short title

35. The short title of this Act is the Canadian Insurance Exchange Act, 1986.





2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 159

An Act to amend the Insurance Act

The Hon. M. Kwinter Minister of Financial Institutions



1st Reading
2nd Reading

November 26th, 1986

3rd Reading

Royal Assent

EXPLANATORY NOTES

The purposes of the Bill are as follows:

- Subsections 27 (2) and 28 (3) of the Act relate to that class of mutual insurance corporations known as farm mutuals. It is proposed that these provisions be amended to remove restrictions imposed on farm mutuals with respect to insuring against risks other than fire. In 1979, the Corporations Act was amended to permit farm mutuals to underwrite the same classes of insurance as property and casualty joint stock insurance companies and, as a result, the restrictions are no longer appropriate. (Sections 1 and 2)
- 2. Farm mutuals will be given the power to invest in joint stock insurance companies incorporated in Ontario other than companies licensed to undertake contracts of life insurance. A farm mutual will be required to obtain the approval of the Minister before exercising this power and the investment will be subject to prescribed terms and conditions. (Section 3 and subsection 8 (2))
 - Provision is made for such a joint stock insurance company to be a member of the Fire Mutuals Guarantee Fund. (Sections 4, 5 and 6)
- 3. Sections 387 and 389 of the Act are amended in order to give farm mutuals the same investment powers as other insurers. (Sections 7 and 9)
- 4. Bonds, debentures and other securities issued or guaranteed by the government of the Republic of South Africa will no longer be specifically authorized as permitted investments by insurers. (Subsection 8 (1))
- Insurers, in accordance with regulations to be made under the Securities Act, will be authorized to acquire more than 30 per cent of the shares of a securities dealer. (Section 10)

Bill 159 1986

An Act to amend the Insurance Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Subsection 27 (2) of the *Insurance Act*, being chapter 218 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:
- (2) An insurer licensed to carry on fire insurance may Insurance of insure an automobile against loss or damage under a policy falling within Part IV.

automobiles

- 2. Subsection 28 (3) of the said Act is amended by striking out "other than mercantile and manufacturing" in the third and fourth lines.
- 3. Section 98 of the said Act is amended by adding thereto the following clause:
 - (ea) prescribing and defining the terms and conditions upon which a mutual insurance corporation that is a participant in the Fire Mutuals Guarantee Fund may invest its funds in the fully paid shares of a joint stock insurance company.
- 4. Section 130 of the said Act is amended by adding thereto the following subsection:
- (3a) Notwithstanding subsection (1), sections 142, 143 and Idem 146 also apply to a joint stock insurance company if all of the shares of the company are owned by one or more mutual insurance corporations that participate in the Fire Mutuals Guarantee Fund.
- 5.—(1) Section 143 of the said Act is amended by adding thereto the following subsection:
- (4a) For the purposes of subsection (4), mutual insurance Idem corporations that participate in the Fire Mutuals Guarantee

Fund and joint stock insurance companies that participate in the Fund shall be deemed to be in the same class.

- (2) Subsection 143 (5) of the said Act is amended by inserting after "Fund" in the third line "and no joint stock insurance company that participates in the Fund".
- **6.** Subsection 146 (2) of the said Act is repealed and the following substituted therefor:

Parties to agreement for Fund

- (2) Subject to the approval of the Superintendent, the following parties may enter into the agreement under subsection (1):
 - 1. Insurers licensed to transact business on the premium note plan.
 - 2. Joint stock insurance companies all the shares of which are owned by one or more mutual insurance corporations that participate in the Fund.

R.S.O. 1980, c. 95

- 3. Mutual insurance corporations incorporated under subsection 148 (3) of the *Corporations Act*.
- 7. Section 387 of the said Act is amended by inserting after "society" in the fourth line "a mutual insurance corporation that participates in the Fire Mutuals Guarantee Fund".
- **8.**—(1) Subclause 388 (1) (a) (i) of the said Act is amended by striking out "the Republic of South Africa" in the second line.
- (2) Section 388 of the said Act is amended by adding thereto the following subsection:

Idem

- (8a) Notwithstanding anything in subsection (1) or section 390, but subject to the approval of the Minister and to such terms and conditions as may be prescribed by the Lieutenant Governor in Council, a mutual insurance corporation that participates in the Fire Mutuals Guarantee Fund may invest in the fully paid shares of any joint stock insurance company incorporated in Ontario that is not licensed to undertake contracts of life insurance if, after the investment, all the shares of the joint stock insurance company will be owned by one or more mutual insurance corporations that participate in the Fund.
- **9.** Section 389 of the said Act is amended by inserting after "society" in the second line "a mutual insurance corporation that participates in the Fire Mutuals Guarantee Fund".

3 1986 Bill 159 INSURANCE

- 10. Section 390 of the said Act is amended by adding thereto the following subsection:
- (2) Notwithstanding clause (1) (d), an insurer, with the Securities approval of the Superintendent, may acquire such percentage of the voting shares of a dealer within the meaning of the Securities Act as is prescribed in a regulation made under that R.S.O. 1980, Act.

- 11. This Act comes into force on the day it receives Royal Commence-Assent.
- 12. The short title of this Act is the Insurance Amendment Short title Act, 1986.







2ND SESSION, 33RD LEGISLATURE, ONTARIO

36 ELIZABETH II, 1987

Bill 159

An Act to amend the Insurance Act

The Hon. M. Kwinter Minister of Financial Institutions



1st Reading November 26th, 1986

2nd Reading February 10th, 1987

3rd Reading

Royal Assent

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

The purposes of the Bill are as follows:

- 1. Subsections 27 (2) and 28 (3) of the Act relate to that class of mutual insurance corporations known as farm mutuals. It is proposed that these provisions be amended to remove restrictions imposed on farm mutuals with respect to insuring against risks other than fire. In 1979, the *Corporations Act* was amended to permit farm mutuals to underwrite the same classes of insurance as property and casualty joint stock insurance companies and, as a result, the restrictions are no longer appropriate. (Sections 1 and 2)
- 2. Farm mutuals will be given the power to invest in joint stock insurance companies incorporated in Ontario other than companies licensed to undertake contracts of life insurance. A farm mutual will be required to obtain the approval of the Minister before exercising this power and the investment will be subject to prescribed terms and conditions. (Section 3 and subsection 8 (2))
 - Provision is made for such a joint stock insurance company to be a member of the Fire Mutuals Guarantee Fund. (Sections 4, 5 and 6)
- 3. Sections 387 and 389 of the Act are amended in order to give farm mutuals the same investment powers as other insurers. (Sections 7 and 9)
- 4. Bonds, debentures and other securities issued or guaranteed by the government of the Republic of South Africa will no longer be specifically authorized as permitted investments by insurers. (Subsection 8 (1))
- 5. Insurers, subject to such terms and conditions as may be prescribed, will be authorized to acquire more than 30 per cent of the shares of a securities dealer. (Sections 3 and 10)

Bill 159 1987

An Act to amend the Insurance Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Subsection 27 (2) of the *Insurance Act*, being chapter 218 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:
- (2) An insurer licensed to carry on fire insurance may Insurance of insure an automobile against loss or damage under a policy falling within Part IV.

automobiles

- 2. Subsection 28 (3) of the said Act is amended by striking out "other than mercantile and manufacturing" in the third and fourth lines.
- 3. Section 98 of the said Act is amended by adding thereto the following clauses:
 - (ea) prescribing and defining the terms and conditions upon which a mutual insurance corporation that is a participant in the Fire Mutuals Guarantee Fund may invest its funds in the fully paid shares of a joint stock insurance company;
 - (eb) prescribing and defining the terms and conditions upon which an insurer may invest its funds in the fully paid voting shares of a dealer within the meaning of the Securities Act.

R.S.O. 1980.

- 4. Section 130 of the said Act is amended by adding thereto the following subsection:
- (3a) Notwithstanding subsection (1), sections 142, 143 and Idem 146 also apply to a joint stock insurance company if all of the shares of the company are owned by one or more mutual insurance corporations that participate in the Fire Mutuals Guarantee Fund.

5.—(1) Section 143 of the said Act is amended by adding thereto the following subsection:

Idem

- (4a) For the purposes of subsection (4) <u>and subsection</u> <u>142 (1)</u>, mutual insurance corporations that participate in the Fire Mutuals Guarantee Fund and joint stock insurance companies that participate in the Fund shall be deemed to be in the same class.
- (2) Subsection 143 (5) of the said Act is amended by inserting after "Fund" in the third line "and no joint stock insurance company that participates in the Fund".
- **6.** Subsection 146 (2) of the said Act is repealed and the following substituted therefor:

Parties to agreement for Fund

- (2) Subject to the approval of the Superintendent, the following parties may enter into the agreement under subsection (1):
 - 1. Insurers licensed to transact business on the premium note plan.
 - 2. Joint stock insurance companies all the shares of which are owned by one or more mutual insurance corporations that participate in the Fund.

R.S.O. 1980, c. 95

- 3. Mutual insurance corporations incorporated under subsection 148 (3) of the *Corporations Act*.
- 7. Section 387 of the said Act is amended by inserting after "society" in the fourth line "a mutual insurance corporation that participates in the Fire Mutuals Guarantee Fund".
- 8.—(1) Subclause 388 (1) (a) (i) of the said Act is amended by striking out "the Republic of South Africa" in the second line.
- (2) Section 388 of the said Act is amended by adding thereto the following subsection:

Idem

(8a) Notwithstanding anything in subsection (1) or section 390, but subject to the approval of the Minister and to such terms and conditions as may be prescribed by the Lieutenant Governor in Council, a mutual insurance corporation that participates in the Fire Mutuals Guarantee Fund may invest in the fully paid shares of any joint stock insurance company incorporated in Ontario that is not licensed to undertake contracts of life insurance if, after the investment, all the shares of the joint stock insurance company will be owned by one or

more mutual insurance corporations that participate in the Fund.

- 9. Section 389 of the said Act is amended by inserting after "society" in the second line "a mutual insurance corporation that participates in the Fire Mutuals Guarantee Fund".
- 10. Section 390 of the said Act is amended by adding thereto the following subsections:
- (2) Subject to such terms and conditions as may be pre-Securities scribed by the Lieutenant Governor in Council, an insurer. with the approval of the Superintendent, may invest its funds in the fully paid voting shares of a dealer within the meaning of the Securities Act.

R.S.O. 1980,

(3) Clauses (1) (c) and (d) do not apply to an investment under subsection (2).

Nonapplication subs. (1) (c, d)

(4) For the purposes of this section and regulations made Definition under clause 98 (eb), "voting share" means a share of any class of shares of a corporation carrying voting rights under all circumstances and a share of any class of shares carrying voting rights by reason of the occurrence of any contingency that has occurred and is continuing.

11. This Act comes into force on the day it receives Royal Commence-Assent.

12. The short title of this Act is the Insurance Amendment Short title Act, 1987.







Bill 159

(Chapter 8 Statutes of Ontario, 1987)

An Act to amend the Insurance Act

The Hon. M. Kwinter *Minister of Financial Institutions*



1st Reading November 26th, 1986

2nd Reading February 10th, 1987

3rd Reading February 11th, 1987

Royal Assent February 12th, 1987



Bill 159 1987

An Act to amend the Insurance Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Subsection 27 (2) of the *Insurance Act*, being chapter 218 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:
- (2) An insurer licensed to carry on fire insurance may Insurance of insure an automobile against loss or damage under a policy falling within Part IV.

- 2. Subsection 28 (3) of the said Act is amended by striking out "other than mercantile and manufacturing" in the third and fourth lines.
- 3. Section 98 of the said Act is amended by adding thereto the following clauses:
 - (ea) prescribing and defining the terms and conditions upon which a mutual insurance corporation that is a participant in the Fire Mutuals Guarantee Fund may invest its funds in the fully paid shares of a joint stock insurance company;
 - (eb) prescribing and defining the terms and conditions upon which an insurer may invest its funds in the fully paid voting shares of a dealer within the meaning of the Securities Act.

R.S.O. 1980,

- 4. Section 130 of the said Act is amended by adding thereto the following subsection:
- (3a) Notwithstanding subsection (1), sections 142, 143 and Idem 146 also apply to a joint stock insurance company if all of the shares of the company are owned by one or more mutual insurance corporations that participate in the Fire Mutuals Guarantee Fund.

5.—(1) Section 143 of the said Act is amended by adding thereto the following subsection:

Idem

- (4a) For the purposes of subsection (4) and subsection 142 (1), mutual insurance corporations that participate in the Fire Mutuals Guarantee Fund and joint stock insurance companies that participate in the Fund shall be deemed to be in the same class.
- (2) Subsection 143 (5) of the said Act is amended by inserting after "Fund" in the third line "and no joint stock insurance company that participates in the Fund".
- **6.** Subsection 146 (2) of the said Act is repealed and the following substituted therefor:

Parties to agreement for Fund

- (2) Subject to the approval of the Superintendent, the following parties may enter into the agreement under subsection (1):
 - 1. Insurers licensed to transact business on the premium note plan.
 - 2. Joint stock insurance companies all the shares of which are owned by one or more mutual insurance corporations that participate in the Fund.
 - 3. Mutual insurance corporations incorporated under subsection 148 (3) of the *Corporations Act*.

R.S.O. 1980, c. 95

- 7. Section 387 of the said Act is amended by inserting after "society" in the fourth line "a mutual insurance corporation that participates in the Fire Mutuals Guarantee Fund".
- **8.**—(1) Subclause 388 (1) (a) (i) of the said Act is amended by striking out "the Republic of South Africa" in the second line.
- (2) Section 388 of the said Act is amended by adding thereto the following subsection:

Idem

(8a) Notwithstanding anything in subsection (1) or section 390, but subject to the approval of the Minister and to such terms and conditions as may be prescribed by the Lieutenant Governor in Council, a mutual insurance corporation that participates in the Fire Mutuals Guarantee Fund may invest in the fully paid shares of any joint stock insurance company incorporated in Ontario that is not licensed to undertake contracts of life insurance if, after the investment, all the shares of the joint stock insurance company will be owned by one or

more mutual insurance corporations that participate in the Fund.

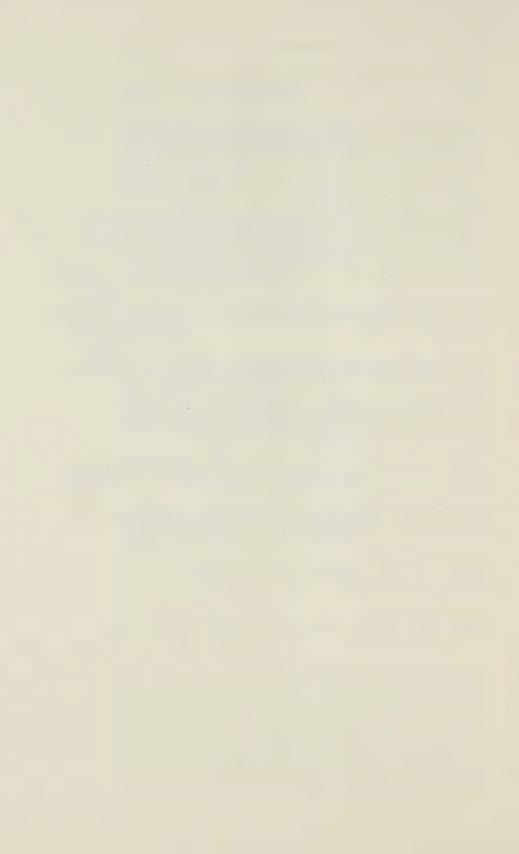
- 9. Section 389 of the said Act is amended by inserting after "society" in the second line "a mutual insurance corporation that participates in the Fire Mutuals Guarantee Fund".
- 10. Section 390 of the said Act is amended by adding thereto the following subsections:
- (2) Subject to such terms and conditions as may be pre- Securities scribed by the Lieutenant Governor in Council, an insurer, with the approval of the Superintendent, may invest its funds in the fully paid voting shares of a dealer within the meaning of the Securities Act.

R.S.O. 1980, c. 466

(3) Clauses (1) (c) and (d) do not apply to an investment under subsection (2).

application subs. (1) (c, d)

- (4) For the purposes of this section and regulations made Definition under clause 98 (eb), "voting share" means a share of any class of shares of a corporation carrying voting rights under all circumstances and a share of any class of shares carrying voting rights by reason of the occurrence of any contingency that has occurred and is continuing.
- 11. This Act comes into force on the day it receives Royal Commence-Assent.
- 12. The short title of this Act is the Insurance Amendment Short title Act, 1987.







Projet de loi 160

du gouvernement

2ND SESSION, 33RD LEGISLATURE, ONTARIO 35 ELIZABETH II, 1986

2º SESSION, 33º LÉGISLATURE, ONTARIO 35 ELIZABETH II, 1986

Bill 160

An Act to provide for greater Certainty in the Reconciliation of the Personal Interests of Members of the Assembly and the Executive Council with their Duties of Office

Projet de loi 160

Loi assurant une plus grande certitude quant au rapprochement des intérêts personnels des membres de l'Assemblée et du Conseil des ministres avec les devoirs de leurs fonctions

The Hon. I. Scott Attorney General



1st Reading

November 27th, 1986

2nd Reading

3rd Reading

Royal Assent

1^{re} lecture

27 novembre 1986

2e lecture

3e lecture

sanction royale

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EXPLANATORY NOTES

The Bill codifies the conduct of members of the Assembly and of the Executive Council that constitutes abuses of office.

They are:

- 1. Conflict of interest (s. 2).
- 2. Use of insider information (s. 3).
- 3. Use of influence of office (s. 4).
- 4. Acceptance of extra benefits (s. 5).

In addition, it is an abuse of office for a member of the Executive Council to grant a benefit to a former member of the Executive Council or to a person on whose behalf a former member has made representations during the first year after the former member leaves the Executive Council (s. 6). It is also an abuse of office for a member of the Executive Council to continue to carry on business (s. 7).

A Commissioner is established as an officer of the Assembly to act as advisor and authority in respect of breaches of the Act. The Commissioner ensures that the required disclosures are adequate and may conduct inquiries and give opinions respecting compliance with the Act. The Commissioner may also recommend that the Assembly impose specified penalties against a member who contravenes the Act.

NOTES EXPLICATIVES

Le projet de loi codifie les actes des membres de l'Assemblée législative et du Conseil des ministres qui constituent des abus de fonction. Ces actes sont les suivants :

- 1. Conflit d'intérêts (art. 2).
- 2. Usage de renseignements d'initiés (art. 3).
- 3. Usage de l'influence dérivée des fonctions (art. 4).
- 4. Acceptation d'avantages supplémentaires (art. 5).

En outre, constitue un abus de fonction le fait pour un membre du Conseil des ministres d'accorder un avantage à un ancien membre du Conseil ou à une personne pour laquelle un ancien membre a fait des observations durant la première année qui suit son départ du Conseil (art. 6). Constitue également un abus de fonction le fait pour un membre de continuer d'exercer des activités commerciales (art. 7).

Est créé un poste de Commissaire qui est un fonctionnaire de l'Assemblée et qui, à ce titre, conseille et prend des décisions dans le cas où des infractions sont commises à la loi. Le Commissaire s'assure que les divulgations requises sont satisfaisantes, et peut effectuer des enquêtes et donner des avis au sujet de l'observation de la loi. Le Commissaire peut également recommander que l'Assemblée impose des sanctions précises à un membre qui contrevient à la loi.

Bill 160 1986

An Act to provide for greater Certainty in the Reconciliation of the Personal Interests of Members of the Assembly and the Executive Council with their Duties of Office

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1. In this Act.

"membre"

"member" means a member of the Legislative Assembly or of the Executive Council, or both;

"intérêt personnel" "private interest" does not include an interest in a decision,

- (a) that is of general public application,
- (b) that affects a member as one of a broad class of electors, or
- (c) that concerns the remuneration and benefits of a member or an officer or employee of the Legislative Assembly;

"conjoint"

"spouse" means a person of the opposite sex to whom the member is married and with whom the member has not entered into a separation agreement or a person of the opposite sex with whom the member is living in a conjugal relationship outside marriage.

Conflict of

2. For the purposes of this Act, a member has a conflict of interest when the member makes a decision or participates in making a decision in the execution of his or her office and at the same time knows that in the making of the decision there is the opportunity to further his or her private interest.

Insider information

3. A member shall not use information that is gained in the execution of his or her office and is not available to the

Projet de loi 160

1986

Loi assurant une plus grande certitude quant au rapprochement des intérêts personnels des membres de l'Assemblée et du Conseil des ministres avec les devoirs de leurs fonctions

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

1 Les définitions qui suivent s'appliquent à la présente loi.

Définitions

«conjoint» Personne du sexe opposé avec qui le membre est «spouse» marié et avec qui il n'a pas conclu d'accord de séparation, ou personne du sexe opposé avec qui il vit dans une union conjugale hors du mariage.

«intérêt personnel» Ne comprend pas un intérêt dans une «private interest» décision qui, selon le cas :

- a) est d'application publique en général;
- b) concerne un membre en sa qualité de membre d'une vaste catégorie d'électeurs;
- c) concerne la rémunération et les avantages d'un membre, d'un fonctionnaire ou d'un employé de l'Assemblée législative.

«membre» Membre de l'Assemblée législative ou du Conseil «member» des ministres, ou des deux.

2 Pour l'application de la présente loi, le membre a un Conflit conflit d'intérêts lorsqu'il prend une décision ou participe à celle-ci dans l'exécution de ses fonctions et qu'il sait, en prenant cette décision, qu'existe la possibilité de favoriser ses intérêts personnels.

3 Le membre n'utilise pas les renseignements qu'il obtient Renseignedans l'exercice de ses fonctions et qui ne sont pas accessibles d'initiés

general public to further or seek to further the member's private interest.

Influence

4. A member shall not use his or her office to seek to influence a decision made by another person to further the member's private interest.

Accepting extra benefits

5.—(1) A member shall not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.

Exception

(2) Subsection (1) does not apply to a gift or personal benefit that is received as an incidence of the protocol or social obligations that normally accompany the responsibilities of office.

Disclosure

(3) Where a gift or personal benefit referred to in subsection (2) exceeds \$200 in value, or where the total value received directly or indirectly from one source in any twelvemonth period exceeds \$200, the member shall immediately disclose to the Commissioner in the form prescribed by the regulations the nature of the gift or benefit, its source and the circumstances under which it was given and accepted.

Benefitting former members of the Executive Council **6.**—(1) The Executive Council or a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission of the government shall not knowingly award or approve a contract with, or grant a benefit to, a former member of the Executive Council that is not on terms common to all persons similarly entitled, other than in respect of further duties in the service of the Crown, until twelve months have expired after the date when the former member ceased to hold office.

Idem

(2) The Executive Council or a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission of the government shall not knowingly award or approve a contract with, or grant a benefit to, a person on whose behalf a former member of the Executive Council has made representations in respect of the contract or benefit until twelve months have expired after the date when the former member ceased to hold office.

Carrying on business

7.—(1) A member of the Executive Council shall not,

au public en général, afin de favoriser ou de chercher à favoriser ses intérêts personnels.

4 Le membre ne fait pas usage de ses fonctions afin de Influence chercher à influencer une décision prise par une autre personne, dans le dessein de favoriser ses intérêts personnels.

5 (1) Sauf dans le cas d'une indemnisation qu'autorise la Acceptation loi, le membre n'accepte pas d'honoraires, de dons ni d'avantages personnels qui sont liés, directement ou indirectement, à taires l'exercice des devoirs de ses fonctions.

d'avantages

(2) Le paragraphe (1) ne s'applique pas à un don ou à un Exception avantage personnel qui est reçu dans le cadre du protocole ou d'obligations sociales qui accompagnent habituellement les charges de la fonction.

(3) Si le don ou l'avantage personnel visé au paragraphe (2) Divulgation a une valeur supérieure à 200 \$, ou si la valeur totale reçue, directement ou indirectement, d'une source au cours d'une période de douze mois est supérieure à 200 \$, le membre divulgue immédiatement au Commissaire, dans la forme prescrite par les règlements, la nature du don ou de l'avantage, sa source et les circonstances dans lesquelles il a été remis et accepté.

6 (1) Le Conseil des ministres, l'un de ses membres ou un Avantages employé d'un ministère, à l'exclusion d'un employé, d'un à d'anciens organisme, d'un conseil ou d'une commission du gouverne- membres du ment, n'accorde ni n'approuve sciemment un contrat en ministres faveur d'un ancien membre du Conseil des ministres, ni ne lui accorde un avantage dont les conditions ne sont pas les mêmes pour toutes les personnes y ayant semblablement droit, à l'exclusion d'avantages concernant d'autres devoirs au service de la Couronne, et ce, tant que douze mois ne se sont pas écoulés à compter de la date où l'ancien membre a cessé d'exercer ses fonctions.

Conseil des

(2) Le Conseil des ministres, l'un de ses membres ou un Idem employé d'un ministère, à l'exclusion d'un employé, d'un organisme, d'un conseil ou d'une commission du gouvernement, n'accorde ni n'approuve sciemment un contrat, ni n'accorde un avantage en faveur d'une personne pour laquelle un ancien membre du Conseil des ministres a fait des observations concernant ce contrat ou cet avantage, tant que douze mois ne se sont pas écoulés à compter de la date où l'ancien membre a cessé d'exercer ses fonctions.

7 (1) À l'exclusion de ce qui est requis ou permis dans le Activités cadre de ses responsabilités, le membre du Conseil des ministres, selon le cas:

commerciales

- (a) engage in employment or in the practice of a profession;
- (b) carry on a business, including the management of personal financial interests; or
- (c) hold an office or directorship other than in a social club, religious organization or political party,

except as required or permitted by the responsibilities of being a member of the Executive Council.

Management trusts

- (2) Where a trust is established for the purposes of complying with clause (1) (b),
 - (a) the trustees shall be persons who are at arm's length with the member and approved by the Commissioner;
 - (b) the trustees shall not consult with the member with respect to managing the trust property; and
 - (c) the trustees shall disclose to the member and the Commissioner material changes in assets, liabilities and financial interests contained in the trust after the changes have occurred.

Procedure on conflict of interest

- **8.**—(1) A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Assembly or the Executive Council, or a committee of either of them, shall, if present at a meeting considering the matter.
 - (a) disclose the general nature of the conflict of interest; and
 - (b) withdraw from the meeting without voting or participating in the consideration of the matter.

Idem

(2) A member of the Executive Council who has reasonable grounds to believe that he or she has a conflict of interest in a matter requiring the member's decision shall request another member of the Executive Council to perform the member's duties in the matter for the purpose of making the decision and the member to whom it is referred may act in the matter for the period of time necessary for the purpose.

- n'exerce pas de profession ni d'emploi; a)
- b) n'exerce pas d'activités commerciales, notamment la gestion d'intérêts financiers personnels:
- n'occupe pas de poste ni ne fait partie d'un conseil c) d'administration, sauf dans un club social, une organisation religieuse ou un parti politique.
- (2) Si une fiducie est créée dans le but de se conformer à Fiducies de l'alinéa (1) b), les fiduciaires :
 - n'ont pas de lien de dépendance avec le membre et a) sont approuvées par le Commissaire;
 - b) ne s'entretiennent pas avec le membre de la gestion des biens en fiducie:
 - c) divulguent au membre et au Commissaire les changements importants apportés à l'actif, au passif et aux intérêts financiers qui sont déposés en fiducie après que ces changements ont été faits.
- 8 (1) Le membre qui a des motifs raisonnables de croire Procédure en qu'il a un conflit d'intérêts dans une affaire qui est devant d'intérêts l'Assemblée, le Conseil des ministres ou un de leurs comités est tenu, s'il est présent à la réunion où l'affaire est étudiée :

- de divulguer la nature générale du conflit d'intérêts; a)
- de se retirer de la réunion sans exercer son droit de vote ou sans participer à l'étude de l'affaire.
- (2) Le membre du Conseil des ministres qui a des motifs Idem raisonnables de croire qu'il a un conflit d'intérêts dans une affaire qui requiert sa décision, demande à un autre membre du Conseil d'exercer ses devoirs dans cette affaire en vue de prendre la décision. Le membre à qui ces devoirs sont confiés peut les exercer pendant le laps de temps nécessaire à cette fin.

Commissioner

Commissioner **9.**—(1) There shall be a Commissioner who is an officer of the Assembly.

Appointment

(2) The Lieutenant Governor in Council shall appoint a person to the office of Commissioner on the address of the Assembly.

Term of office

(3) The person appointed shall hold office for a term of five years and may be reappointed for a further term or terms.

Removal

(4) The person appointed as Commissioner may be removed before the expiration of the term of office by the Lieutenant Governor in Council for cause on the address of the Assembly.

Salary

(5) The Commissioner shall be paid such remuneration and allowances as are fixed by the Lieutenant Governor in Council.

Staff

(6) The employees and officers that are necessary for the performance of the duties of the Commissioner shall be members of the staff of the Office of the Assembly.

Annual report

10. The Commissioner shall report annually upon the affairs of his or her office to the Speaker of the Assembly who shall cause the report to be laid before the Assembly.

Disclosure

Disclosure statement 11.—(1) Every member shall, within thirty days of taking office, and thereafter at least annually, file with the Commissioner a disclosure statement in the form prescribed by the regulations.

Contents

- (2) The disclosure statement shall contain,
 - (a) a statement of the assets, liabilities and financial interests of the member and the member's spouse and minor children;

R.S.O. 1980, c. 466

- (b) a statement of any income the member and the member's spouse and minor children, and private companies as defined in the Securities Act controlled by any of them, have received in the preceding twelve months or are entitled to receive in the next twelve months and the source of the income; and
- (c) any other information that is prescribed by the regulations.

Commissaire

- 9 (1) Est créé un poste de Commissaire qui est un fonc- Commissaire tionnaire de l'Assemblée.
- (2) Le lieutenant-gouverneur en conseil nomme une per- Nomination sonne au poste de Commissaire sur adresse de l'Assemblée.
- (3) La personne nommée exerce un mandat de cinq ans. Mandat Son mandat peut être renouvelé.
- (4) Le lieutenant-gouverneur en conseil, sur adresse de Révocation l'Assemblée, peut révoquer la personne nommée en qualité de Commissaire avant l'expiration de son mandat, pour un motif valable.
- (5) Le Commissaire reçoit la rémunération et les indemni- Traitement tés que fixe le lieutenant-gouverneur en conseil.
- (6) Le personnel nécessaire à l'exécution des fonctions du Personnel Commissaire se compose des membres du personnel du bureau de l'Assemblée
- 10 Chaque année, le Commissaire présente un rapport de Rapport ses travaux au président de l'Assemblée qui le fait déposer devant l'Assemblée.

Divulgation

11 (1) Chaque membre, dans les trente jours du début de État de ses fonctions, et au moins annuellement par la suite, dépose auprès du Commissaire un état de divulgation dans la forme prescrite par les règlements.

(2) L'état de divulgation comporte :

Teneur

- un état de l'actif, du passif et des intérêts financiers du membre, de son conjoint et de ses enfants mineurs:
- b) un état de tout revenu que le membre, son conjoint, ses enfants mineurs, et les compagnies privées, au sens de la Loi sur les valeurs mobilières, dont l'un L.R.O. 1980, quelconque d'entre eux a le contrôle, ont reçu au cours des douze mois précédents ou sont en droit de recevoir au cours des douze prochains mois, ainsi que l'indication de la source de ce revenu;

chap. 466

tout autre renseignement prescrit par les règlec) ments.

Affiliated corporations

R.S.O. 1980.

(3) Where an asset, liability or financial interest is held in respect of a corporation, disclosure shall also be made of any other corporation that is an affiliate of the corporation as determined under subsections 1 (2) to (6) of the Securities Act.

Meeting with Commissioner (4) After filing a disclosure statement, the member and the member's spouse, if available, shall meet with the Commissioner to ensure that disclosure has been full and complete and to obtain advice on their obligations under this Act.

Public disclosure statement

- 12.—(1) After meeting with the member and with the member's spouse, if available, the Commissioner shall prepare a public disclosure statement containing all relevant information provided by the member and in respect of the member's spouse and minor children, except,
 - (a) assets, liabilities and financial interests having a value of less than \$1,000;
 - (b) the source of income where the income paid from the source has a value of less than \$1,000 in any twelve-month period;
 - (c) the amount of income of the member's spouse or minor children or of a private company controlled by the spouse or a minor child where the income is paid from a source other than directly from a ministry or an agency, board or commission of the government;
 - (d) the municipal address or legal description of real property that is primarily for the residential or recreational use of the member or the member's spouse or minor children;
 - (e) personal property used for transportation or for household, educational, recreational, social or aesthetic purposes;
 - (f) the amount of cash on hand or on deposit in a bank or other institution authorized to borrow money by means of receiving deposits from the general public;
 - (g) the amount of Canada Savings Bonds and other investments or securities of fixed value issued or guaranteed by any level of government in Canada or an agency of such government;

(3) Si un actif, un passif ou un intérêt financier est détenu Compagnie concernant une compagnie, toute autre compagnie qui fait partie du même groupe doit également faire l'objet d'une divulgation, comme le prévoient les paragraphes 1 (2) à (6) de la Loi sur les valeurs mobilières.

groupe

L.R.O. 1980, chap. 466

(4) Après avoir déposé un état de divulgation, le membre et son conjoint, si ce dernier est disponible, rencontrent le Commissaire afin de s'assurer que la divulgation a été complète, et d'obtenir des conseils concernant leurs obligations en vertu de la présente loi.

Rencontre avec le

12 (1) Après avoir rencontré le membre et son conjoint, si État de ce dernier est disponible, le Commissaire établit un état de publique divulgation publique faisant état de tous les renseignements pertinents fournis par le membre, et concernant son conjoint et ses enfants mineurs, à l'exclusion de ce qui suit :

- a) l'actif, le passif et les intérêts financiers dont la valeur est inférieure à 1 000 \$:
- la source de revenu, si ce revenu est inférieur à b) 1 000 \$ au cours d'une période de douze mois;
- c) le montant du revenu du conjoint, des enfants mineurs du membre, ou d'une compagnie privée que contrôle le conjoint ou un enfant mineur, si ce revenu provient d'une source autre que directement d'un ministère, d'un organisme, d'un conseil ou d'une commission du gouvernement;
- l'adresse municipale ou la description légale d'un d) bien immeuble utilisé essentiellement à des fins de résidence ou de loisir par le membre, son conjoint ou ses enfants mineurs:
- les biens meubles utilisés à des fins de transport, e) domestiques, éducatives, sociales, décoratives ou de loisirs:
- le montant de l'argent en caisse ou en dépôt dans f) une banque ou un autre établissement autorisé à faire des emprunts, grâce aux dépôts qu'il reçoit du grand public;
- g) le montant d'obligations d'épargne du Canada et d'autres placements ou valeurs mobilières à valeur fixe, émis ou garantis par un palier de gouvernement au Canada ou l'un de ses organismes;

- (h) the value of registered retirement savings plans that are not self-administered;
- (i) the amount invested in open-ended mutual funds;
- (j) the value of guaranteed investment certificates or other similar financial instruments;
- (k) the value of annuities and life insurance policies;
- (1) the value of pension rights.

Exception

(2) The Commissioner may except from the public disclosure statement prepared under subsection (1) the source of income received by a member's spouse or minor child in respect of services that are customarily provided on a confidential basis.

Content

(3) The public disclosure statement shall contain a statement of the nature of the assets referred to in clauses (1) (f) to (1) and the name and location of persons or institutions against whom the assets are held.

Idem

(4) The public disclosure statement shall contain a statement of any gifts or benefits that have been disclosed to the Commissioner under subsection 5 (3).

Filing

(5) The Commissioner shall, as soon as is practicable, file the public disclosure statement with the Clerk of the Legislative Assembly who shall make it available for examination by the public.

Commissioner's opinions and advice

13.—(1) A member may, by application in writing, request that the Commissioner give an opinion and recommendations on any matter respecting the obligations of the member under this Act.

Inquiries

(2) The Commissioner may make such inquiries as the Commissioner considers appropriate and provide the member with a written opinion and recommendations.

Confidentiality (3) The opinion and recommendations of the Commissioner are confidential, but may be released by the member or with the consent of the member in writing.

Commissioner's opinion on referred question

14.—(1) A member who has reasonable and probable grounds to believe that another member is in contravention of this Act may, by application in writing setting out the grounds

- h) la valeur des régimes enregistrés d'épargne-retraite dont l'administration n'est pas autonome;
- i) le montant investi dans des compagnies d'investissement à capital variable;
- la valeur des certificats de placement garantis ou i) d'autres effets financiers semblables:
- la valeur de rentes et de polices d'assurance-vie; k)
- 1) la valeur des droits à une pension.
- (2) Le Commissaire peut soustraire de l'état de divulgation Exception publique établi en vertu du paragraphe (1), la source du revenu que le conjoint ou l'enfant mineur du membre a reçu en ce qui concerne des services habituellement fournis confidentiellement.

(3) L'état de divulgation publique comporte une déclara- Teneur tion de la nature de l'actif visé aux alinéas (1) f) à l), ainsi que les noms et lieux de personnes ou d'établissements à l'égard desquels l'actif est détenu.

(4) L'état de divulgation publique comporte une déclara- Idem tion des dons ou avantages qui ont été divulgués au Commissaire en vertu du paragraphe 5 (3).

(5) Dès que cela est possible, le Commissaire dépose l'état Dépôt de divulgation publique auprès du greffier de l'Assemblée législative qui le met à la disposition du public pour examen.

13 (1) Un membre peut, sur demande écrite, demander Avis et que le Commissaire donne un avis et formule des recommandations sur une affaire qui a trait aux obligations du membre en vertu de la présente loi.

(2) Le Commissaire peut faire les enquêtes qu'il estime per- Enquête tinentes, et fournir au membre, par écrit, son avis et ses recommandations.

Confidentia-(3) L'avis et les recommandations du Commissaire sont confidentiels. Ils peuvent toutefois être communiqués par le membre ou avec le consentement écrit de celui-ci.

14 (1) Un membre qui a des motifs raisonnables et proba- Avis du bles de croire qu'un autre membre enfreint la présente loi sur un renvoi peut, sur demande écrite qui énonce les motifs de sa convic-

for the belief and the nature of the contravention alleged, request that the Commissioner give an opinion respecting the compliance of the other member with the provisions of this Act.

Idem

(2) The Legislative Assembly may, by resolution, request that the Commissioner give an opinion on any matter respecting the compliance of a member with the provisions of this Act.

Idem

(3) The Executive Council may request that the Commissioner give an opinion on any matter respecting the compliance of a member of the Executive Council with the provisions of this Act.

Inquiry by Assembly

(4) Where a matter has been referred to the Commissioner under subsection (1) or (2), the Legislative Assembly or a committee thereof shall not conduct an inquiry into the matter.

Inquiry

c. 411

15.—(1) Upon receiving a request under section 14, the Commissioner may conduct an inquiry and for the purpose may elect to exercise the powers of a commission under Parts R.S.O. 1980, I and II of the *Public Inquiries Act*, in which case those Parts apply to the inquiry as if it were an inquiry under that Act.

Report to

Speaker

(2) Where the request for an opinion is made under subsection 14 (1) or (2), the Commissioner shall report his or her opinion to the Speaker of the Assembly who shall cause the report to be laid before the Assembly.

Report to Lieutenant Governor in Council

(3) Where the request for an opinion is made under subsection 14 (3), the Commissioner shall report his or her opinion to the Clerk of the Executive Council.

Penalties R.S.O. 1980, c. 411

- **16.**—(1) Where the Commissioner conducts an inquiry under Parts I and II of the Public Inquiries Act for the purposes of subsection 14 (1) or (2) and finds that the member has contravened section 3, 4, 5, 6, 7 or 8, or has refused to file a disclosure statement within the time provided by section 11, the Commissioner may recommend in the report that is laid before the Assembly,
 - (a) that the member be reprimanded;
 - (b) that the member pay a fine in an amount recommended by the Commissioner, but not exceeding \$5,000;
 - (c) that the member pay compensation in respect of damage suffered by another person as a result of

tion ainsi que la nature de l'infraction prétendue, demander que le Commissaire donne son avis sur une affaire avant trait à l'observation de la présente loi par l'autre membre.

- (2) L'Assemblée législative peut, par voie de résolution, Idem demander que le Commissaire donne son avis sur une affaire ayant trait à l'observation de la présente loi par un membre.
- (3) Le Conseil des ministres peut demander que le Com- Idem missaire donne son avis sur une affaire avant trait à l'observation de la présente loi par l'un de ses membres.
- (4) Si une affaire a été transmise au Commissaire en vertu des paragraphes (1) ou (2), l'Assemblée législative ou l'un de ses comités n'enquête pas sur cette affaire.

Enquête par l'Assemblée

15 (1) Après avoir reçu une demande en vertu de l'article Enquête 14, le Commissaire peut faire une enquête et, à cette fin, peut choisir d'exercer les pouvoirs conférés à une commission par les parties I et II de la Loi sur les enquêtes publiques, auquel cas, elles s'appliquent à l'enquête de la même façon que s'il s'agissait d'une enquête en vertu de cette loi.

L.R.O. 1980,

(2) Si la demande d'avis est faite en vertu des paragraphes 14 (1) ou (2), le Commissaire présente un rapport de son avis l'Assemblée au président qui le fait déposer devant l'Assemblée.

Rapport au

(3) Si la demande d'avis est faite en vertu du paragraphe 14 (3), le Commissaire fait rapport de son avis au greffier du Conseil des ministres.

Rapport au lieutenantgouverneur en conseil

16 (1) Si le Commissaire fait une enquête en vertu des parties I et II de la Loi sur les enquêtes publiques aux fins des paragraphes 14 (1) ou (2), et constate que le membre a contrevenu à l'article 3, 4, 5, 6, 7 ou 8, ou a refusé de déposer un état de divulgation dans le délai prévu à l'article 11, il peut recommander, dans le rapport déposé devant l'Assemblée, une ou plusieurs des mesures suivantes :

Pénalité L.R.O. 1980. chap. 411

- que le membre soit réprimandé; a)
- qu'il paie l'amende recommandée par le Commisb) saire, qui ne peut être supérieure à 5 000 \$;
- c) qu'il verse une indemnisation dont le Commissaire précise le montant, pour le dommage qu'a subi une autre personne, à la suite de la contravention du membre:

the member's contravention, in such amount as is specified by the Commissioner;

- (d) that the member's seat be declared vacant until an election is held in the member's electoral district;
- (e) that the member be ineligible to be nominated as a candidate for election as a member of the Assembly for such period as is specified by the Commissioner, but not exceeding eight years,

or any combination of them.

Order of Assembly

R.S.O. 1980,

c. 235

(2) The Assembly may order the imposition of the recommendation of the Commissioner under subsection (1) or may reject the recommendation, and sections 45 and 48 of the Legislative Assembly Act apply in the same manner as to a contempt of the Assembly, except the power to further inquire into the contravention or to impose a punishment other than the one recommended.

Regulations

17. The Lieutenant Governor in Council may make regulations prescribing any matter that is referred to in this Act as prescribed by the regulations.

Commencement

18.—(1) This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Filing of disclosure statements

(2) Members who are in office when this Act comes into force shall file the disclosure statement required by section 11 within thirty days after this Act comes into force.

Short title

19. The short title of this Act is the Members' Standards of Office Act, 1986.

- d) qu'il ait son siège déclaré vacant jusqu'à ce qu'une élection soit tenue dans la circonscription électorale du membre:
- e) qu'il n'ait pas le droit de se présenter comme candidat à une élection en qualité de membre de l'Assemblée et ce, pour la période que précise le Commissaire, mais qui ne peut être supérieure à huit ans
- (2) L'Assemblée peut ordonner l'imposition des mesures que recommande le Commissaire en vertu du paragraphe (1) ou rejeter ces recommandations. Les articles 45 et 48 de la Loi sur l'Assemblée législative s'appliquent de la même façon L.R.O. 1980, que dans le cas d'outrage à l'Assemblée, sauf qu'il n'est pas possible de pousser plus avant l'enquête relative à la contravention, ou d'imposer une sanction autre que celle qui est recommandée

17 Le lieutenant-gouverneur en conseil peut, par règle-Règlements ment, prescrire une question mentionnée dans la présente loi comme étant prescrite par les règlements.

tenant-gouverneur fixe par proclamation.

- 18 (1) La présente loi entre en vigueur le jour que le lieu- Entrée en
- (2) Les membres en fonction lors de l'entrée en vigueur de Dépôt des la présente loi déposent l'état de divulgation requis par divulgation l'article 11 dans les trente jours de l'entrée en vigueur de la présente loi.

19 Le titre abrégé de la présente loi est Loi de 1986 sur les Titre abrégé normes exigées des membres de l'Assemblée dans l'exercice de leurs fonctions.



Bill 161

Government Bill

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2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 161

An Act to amend the Courts of Justice Act, 1984

The Hon. I. Scott

Attorney General



1st Reading
2nd Reading

November 27th, 1986

3rd Reading

Daniel Account

Royal Assent

EXPLANATORY NOTES

- SECTION 1. The position of senior judge is created for the Unified Family Court.
- SECTION 2. Correction of a reference.
- SECTIONS 3, 4 and 5. These amendments are complementary to recent changes to the *Criminal Code* (Canada), which now refers to "provincial court judges" rather than "magistrates".
- SECTION 6. The Official Guardian's report will no longer be automatic in all divorce proceedings involving children. Instead, whenever a question concerning custody of or access to a child is before the court in proceedings under the *Divorce Act*, 1985 (Canada) or the *Children's Law Reform Act*, the Official Guardian will be empowered to investigate and report to the court on matters affecting the child. The Official Guardian will determine which cases will be investigated and the nature and extent of the investigation.
- **SECTION 7.** This section corrects an oversight in the *Courts of Justice Act, 1984*. Parts of section 27 of the *Judicature Act*, concerning appeals of orders for costs, were omitted although it was not intended to repeal them.
- **SECTION 8.** Provides express authorization for the renewal of old writs of execution, in accordance with the procedures that have been followed since January 1, 1985.
- **SECTION 9.** Complementary to section 6.

Bill 161 1986

An Act to amend the Courts of Justice Act, 1984

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 39 (1) of the Courts of Justice Act, 1984, being chapter 11, is repealed and the following substituted therefor:
 - (1) The Unified Family Court shall be presided over by,

Composition of court

- (a) a senior judge of the District Court, appointed for the Unified Family Court; or
- (b) a judge of the District Court,

who is a local judge of the High Court and is authorized under subsection (2) to exercise the jurisdiction of a judge of the Provincial Court (Family Division).

- (2) Section 39 of the said Act is amended by adding thereto the following subsection:
- (2a) The senior judge appointed for the Unified Family Dut Court shall direct and supervise the sittings of the Unified Family Court and the assignment of its judicial duties.

Duties of senior judge

- 2. Subsection 44 (4) of the said Act is amended by striking out "a proceeding referred to in subsection 40 (1)" in the first and second lines and inserting in lieu thereof "a proceeding under a statutory provision set out in the Schedule to this Part".
- 3. Subsection 47 (1) of the said Act, as amended by the Statutes of Ontario, 1984, Chapter 55, section 213, is further amended by striking out "magistrate under the *Criminal Code* (Canada)" in the second and third lines and inserting in lieu

thereof "judge sitting in the Provincial Court (Criminal Division)".

- **4.**—(1) Clause 61 (1) (b) of the said Act is repealed.
- (2) Subsection 61 (2) of the said Act is repealed.
- 5. Subsection 67 (1) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 64, section 3, is repealed and the following substituted therefor:

Jurisdiction

- (1) When sitting in the Provincial Court (Criminal Division), a provincial judge has the powers and authority that any Act of the Parliament of Canada confers on a provincial court judge or on two or more justices of the peace.
- **6.**—(1) Subsections 125 (1) and (2) of the said Act are repealed and the following substituted therefor:

Investigation and report of Official Guardian S.C. 1986, c. 4 R.S.O. 1980, c. 68 (1) In a proceeding under the *Divorce Act*, 1985 (Canada) or the *Children's Law Reform Act* in which a question concerning custody of or access to a child is before the court, the Official Guardian may cause an investigation to be made and may report and make recommendations to the court on all matters concerning custody of or access to the child and the child's support and education.

Idem

- (2) The Official Guardian may act under subsection (1) on his or her own initiative, at the request of a court or at the request of any person.
- (2) Subsection 125 (3) of the said Act is amended by striking out "divorce" in the seventh line.
- (3) Subsections 125 (5), (6) and (7) of the said Act are repealed.
- 7. Clause 143 (b) of the said Act is amended by striking out "on the ground that the discretion was wrongly exercised" in the third and fourth lines.
- **8.** The said Act is amended by adding thereto the following section:

Renewal of writs of execution issued before January 1, 1985 **159a.** A writ of execution that was issued before the 1st day of January, 1985 may be renewed in the same manner and with the same effect as a writ of execution issued on or after that day.

- 9. Section 32 of the *Children's Law Reform Act*, being chapter 68 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is repealed.
- **10.**—(1) This Act, except section 8, comes into force on the Commenceday it receives Royal Assent.
- (2) Section 8 shall be deemed to have come into force on the ^{Idem} 1st day of January, 1985.
- 11. The short title of this Act is the Courts of Justice Short title Amendment Act, 1986.







2nd SESSION, 33rd LEGISLATURE, ONTARIO

35 ELIZABETH II, 1987

Bill 161

An Act to amend the Courts of Justice Act, 1984



The Hon. I. Scott

Attorney General

1st Reading

November 27th, 1986

2nd Reading

January 28th, 1987

3rd Reading

Royal Assent

(Reprinted as amended by the Committee of the Whole House)

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EXPLANATORY NOTES

SECTION 1. The position of senior judge is created for the Unified Family Court.

SECTION 2. Correction of a reference.

SECTIONS 3, 4 and 5. These amendments are complementary to recent changes to the *Criminal Code* (Canada), which now refers to "provincial court judges" rather than "magistrates".

SECTION 6. Self-explanatory.

SECTION 7. The Official Guardian's report will no longer be automatic in all divorce proceedings involving children. Instead, whenever a question concerning custody of or access to a child is before the court in proceedings under the *Divorce Act*, 1985 (Canada) or the *Children's Law Reform Act*, the Official Guardian will be empowered to investigate and report to the court on matters affecting the child. The Official Guardian will determine which cases will be investigated and the nature and extent of the investigation.

SECTION 8. This section corrects an oversight in the *Courts of Justice Act, 1984*. Parts of section 27 of the *Judicature Act*, concerning appeals of orders for costs, were omitted although it was not intended to repeal them.

SECTION 9. Provides express authorization for the renewal of old writs of execution, in accordance with the procedures that have been followed since January 1, 1985.

SECTION 10. Complementary to section 7.

An Act to amend the Courts of Justice Act. 1984

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 39 (1) of the Courts of Justice Act, 1984, being chapter 11, is repealed and the following substituted therefor:
 - (1) The Unified Family Court shall be presided over by,

Composition of court

- (a) a senior judge of the District Court, appointed for the Unified Family Court; or
- (b) a judge of the District Court,

who is a local judge of the High Court and is authorized under subsection (2) to exercise the jurisdiction of a judge of the Provincial Court (Family Division).

- (2) Section 39 of the said Act is amended by adding thereto the following subsection:
- (2a) The senior judge appointed for the Unified Family Duties of Court shall direct and supervise the sittings of the Unified Family Court and the assignment of its judicial duties.

senior judge

- 2. Subsection 44 (4) of the said Act is amended by striking out "a proceeding referred to in subsection 40 (1)" in the first and second lines and inserting in lieu thereof "a proceeding under a statutory provision set out in the Schedule to this Part''.
- 3. Subsection 47 (1) of the said Act, as amended by the Statutes of Ontario, 1984, Chapter 55, section 213, is further amended by striking out "magistrate under the Criminal Code (Canada)" in the second and third lines and inserting in lieu

thereof "judge sitting in the Provincial Court (Criminal Division)".

- **4.**—(1) Clause 61 (1) (b) of the said Act is repealed.
- (2) Subsection 61 (2) of the said Act is repealed.
- 5. Subsection 67 (1) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 64, section 3, is repealed and the following substituted therefor:

Jurisdiction

- (1) When sitting in the Provincial Court (Criminal Division), a provincial judge has the powers and authority that any Act of the Parliament of Canada confers on a provincial court judge or on two or more justices of the peace.
- **6.** The said Act is amended by adding thereto the following section:

Appeals

- **75a.** Where no provision is made for an appeal from an order of the Provincial Court (Family Division), an appeal lies to the District Court.
- 7.—(1) Subsections 125 (1) and (2) of the said Act are repealed and the following substituted therefor:

Investigation and report of Official Guardian S.C. 1986, c. 4 R.S.O. 1980, c. 68 (1) In a proceeding under the *Divorce Act, 1985* (Canada) or the *Children's Law Reform Act* in which a question concerning custody of or access to a child is before the court, the Official Guardian may cause an investigation to be made and may report and make recommendations to the court on all matters concerning custody of or access to the child and the child's support and education.

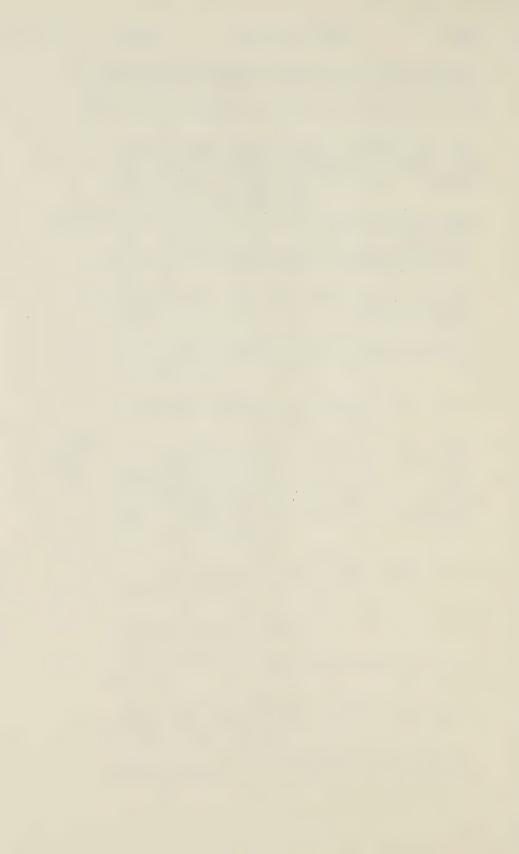
Idem

- (2) The Official Guardian may act under subsection (1) on his or her own initiative, at the request of a court or at the request of any person.
- (2) Subsection 125 (3) of the said Act is amended by striking out "divorce" in the seventh line.
- (3) Subsections 125 (5), (6) and (7) of the said Act are repealed.
- **8.** Clause 143 (b) of the said Act is amended by striking out "on the ground that the discretion was wrongly exercised" in the third and fourth lines.
- **9.** The said Act is further amended by adding thereto the following section:

159a. A writ of execution that was issued before the 1st Renewal of day of January, 1985 may be renewed in the same manner and execution with the same effect as a writ of execution issued on or after issued that day.

before January 1, 1985

- 10. Section 32 of the Children's Law Reform Act, being chapter 68 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is repealed.
- 11.—(1) This Act, except section 9, comes into force on the Commenceday it receives Royal Assent.
- (2) Section 9 shall be deemed to have come into force on the Idem 1st day of January, 1985.
- 12. The short title of this Act is the Courts of Justice Short title Amendment Act, 1987.







2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II. 1987

Bill 161

(Chapter 1 Statutes of Ontario, 1987)

An Act to amend the Courts of Justice Act, 1984

The Hon. I. Scott Attorney General

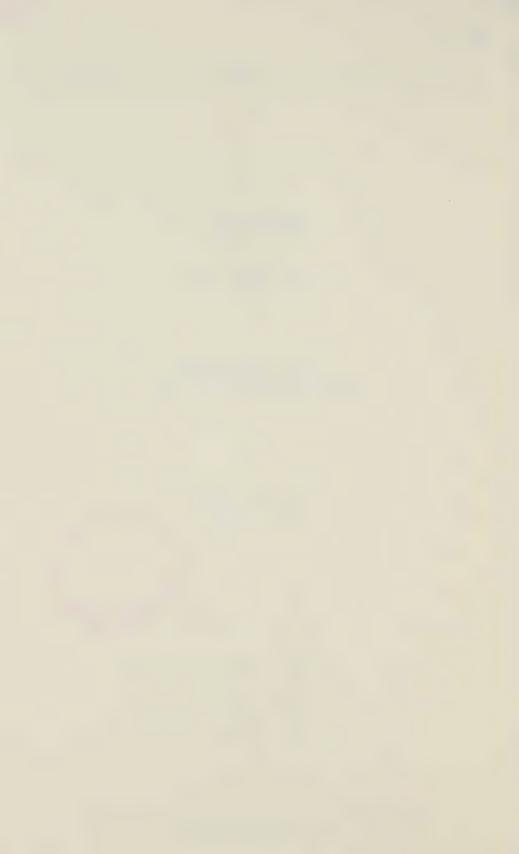


1st Reading November 27th, 1986

2nd Reading January 28th, 1987

3rd Reading February 2nd, 1987

Royal Assent February 3rd, 1987



An Act to amend the Courts of Justice Act, 1984

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 39 (1) of the Courts of Justice Act. 1984. being chapter 11, is repealed and the following substituted therefor:
 - (1) The Unified Family Court shall be presided over by,

Composition

- (a) a senior judge of the District Court, appointed for the Unified Family Court; or
- (b) a judge of the District Court,

who is a local judge of the High Court and is authorized under subsection (2) to exercise the jurisdiction of a judge of the Provincial Court (Family Division).

- (2) Section 39 of the said Act is amended by adding thereto the following subsection:
- (2a) The senior judge appointed for the Unified Family Duties of Court shall direct and supervise the sittings of the Unified Family Court and the assignment of its judicial duties.

senior judge

- 2. Subsection 44 (4) of the said Act is amended by striking out "a proceeding referred to in subsection 40 (1)" in the first and second lines and inserting in lieu thereof "a proceeding under a statutory provision set out in the Schedule to this Part''.
- 3. Subsection 47 (1) of the said Act, as amended by the Statutes of Ontario, 1984, Chapter 55, section 213, is further amended by striking out "magistrate under the Criminal Code (Canada)" in the second and third lines and inserting in lieu

thereof "judge sitting in the Provincial Court (Criminal Division)".

- **4.**—(1) Clause 61 (1) (b) of the said Act is repealed.
- (2) Subsection 61 (2) of the said Act is repealed.
- 5. Subsection 67 (1) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 64, section 3, is repealed and the following substituted therefor:

Jurisdiction

- (1) When sitting in the Provincial Court (Criminal Division), a provincial judge has the powers and authority that any Act of the Parliament of Canada confers on a provincial court judge or on two or more justices of the peace.
- **6.** The said Act is amended by adding thereto the following section:

Appeals

- **75a.** Where no provision is made for an appeal from an order of the Provincial Court (Family Division), an appeal lies to the District Court.
- 7.—(1) Subsections 125 (1) and (2) of the said Act are repealed and the following substituted therefor:

Investigation and report of Official Guardian S.C. 1986, c. 4 R.S.O. 1980, c. 68 (1) In a proceeding under the *Divorce Act, 1985* (Canada) or the *Children's Law Reform Act* in which a question concerning custody of or access to a child is before the court, the Official Guardian may cause an investigation to be made and may report and make recommendations to the court on all matters concerning custody of or access to the child and the child's support and education.

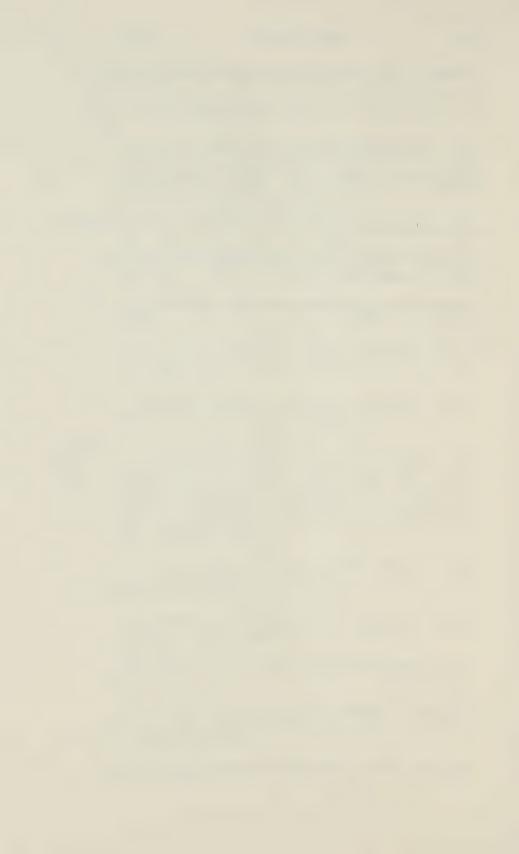
Idem

- (2) The Official Guardian may act under subsection (1) on his or her own initiative, at the request of a court or at the request of any person.
- (2) Subsection 125 (3) of the said Act is amended by striking out "divorce" in the seventh line.
- (3) Subsections 125 (5), (6) and (7) of the said Act are repealed.
- **8.** Clause 143 (b) of the said Act is amended by striking out "on the ground that the discretion was wrongly exercised" in the third and fourth lines.
- **9.** The said Act is further amended by adding thereto the following section:

159a. A writ of execution that was issued before the 1st Renewal of day of January, 1985 may be renewed in the same manner and execution with the same effect as a writ of execution issued on or after issued that day.

January 1,

- 10. Section 32 of the Children's Law Reform Act, being chapter 68 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is repealed.
- 11.—(1) This Act, except section 9, comes into force on the Commenceday it receives Royal Assent.
- (2) Section 9 shall be deemed to have come into force on the Idem 1st day of January, 1985.
- 12. The short title of this Act is the Courts of Justice Short title Amendment Act, 1987.







2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 162

An Act to provide for the Registration of Rental Accommodation Agents

Mr. Philip



1st Reading

November 27th, 1986

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The Bill provides for the registration of rental accommodation agents who are defined as persons who, among other things, provide information for a fee concerning the location and availability of rental accommodation. It also sets out the maximum fees that may be charged by such agents for their services and provides for the refunding of any amounts paid in excess of the maximum fee.

An Act to provide for the Registration of Rental Accommodation Agents

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act.

Definitions

- "Director" means the Director of the Consumer Protection Division of the Ministry of Consumer and Commercial Relations:
- "Registrar" means the Registrar of the Consumer Protection Bureau:
- "rental accommodation agent" means a person who, for a fee, furnishes information concerning the location, price, description and availability of residential accommodation that may be rented, shared or sublet, or arranges for the renting, sharing or subletting of residential accommodation on behalf of another person or both.
- 2. The Registrar may exercise the powers and shall perform the duties conferred or imposed upon the Registrar by or under this Act under the supervision of the Director.

Duties of

- **3.**—(1) No person shall carry on business as a rental Registration required accommodation agent unless the person is registered by the Registrar under this Act.
- (2) A registered rental accommodation agent shall not Name and carry on business in a name other than the name in which the agent is registered or from a place of business other than that authorized by the registration.
- 4. Sections 5 to 12, both inclusive, of the Consumer Pro-Registration tection Act (registration of itinerant sellers) apply with necessary modifications to the registration of rental accommodation agents.

R.S.O. 1980,

Contract for services

- **5.**—(1) A contract for services of a rental accommodation agent shall be in the form prescribed by the regulations and shall provide that,
 - (a) the rental accommodation agent may retain for administrative services not more than \$25 out of a fee paid in advance;
 - (b) if, within fifteen days after the contract is entered into, the customer has not secured rental accommodation through the information or services provided by the agent, the customer shall be entitled to a refund of the portion of the fee paid in advance that exceeds \$25.

Notice

(2) A customer claiming a refund under clause (1) (b) shall give written notice to this effect to the rental accommodation agent within thirty days after the contract is entered into.

Refund

(3) A rental accommodation agent shall, within ten days of receiving a notice under subsection (2), refund the portion of the fee paid in advance that exceeds \$25.

Maximum fee

6.—(1) Where a customer secures rental accommodation through the information or services provided by the rental accommodation agent, the maximum fee to which the agent is entitled is the equivalent of one month's rent for the accommodation secured.

Idem

(2) If the accommodation referred to in subsection (1) is shared, the maximum fee shall be equivalent to the portion of one month's rent that is payable by the customer.

Notice

(3) If a customer has paid in advance a fee that exceeds the equivalent of one month's rent for the accommodation secured, the customer may claim a refund of the excess amount by giving written notice to this effect to the agent within fifteen days after the accommodation is secured.

Refund

(4) A rental accommodation agent shall, within ten days of receiving a notice under subsection (3), refund the portion of the fee paid in advance that exceeds the equivalent of one month's rent.

Failure to refund 7. Where a rental accommodation agent, without reasonable excuse, fails to refund the excess amount required under subsection 5 (3) or 6 (4) within the time specified, the agent shall pay \$100 to the customer, in addition to the excess amount, which amounts are recoverable in any court of competent jurisdiction.

- 8.—(1) Any notice or order required to be given or served Service under this Act is sufficiently given or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the latest address for service appearing on the records of the Ministry of Consumer and Commercial Relations
- (2) Where service is made by registered mail, the service When service shall be deemed to be made on the third day after the day of made mailing.

9.—(1) Every person who, knowingly,

Offences

- (a) furnishes false information in an application under this Act or in any statement or return required to be furnished under this Act or the regulations; or
- (b) fails to comply with any order, direction or other requirement under this Act or the regulations,

is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both.

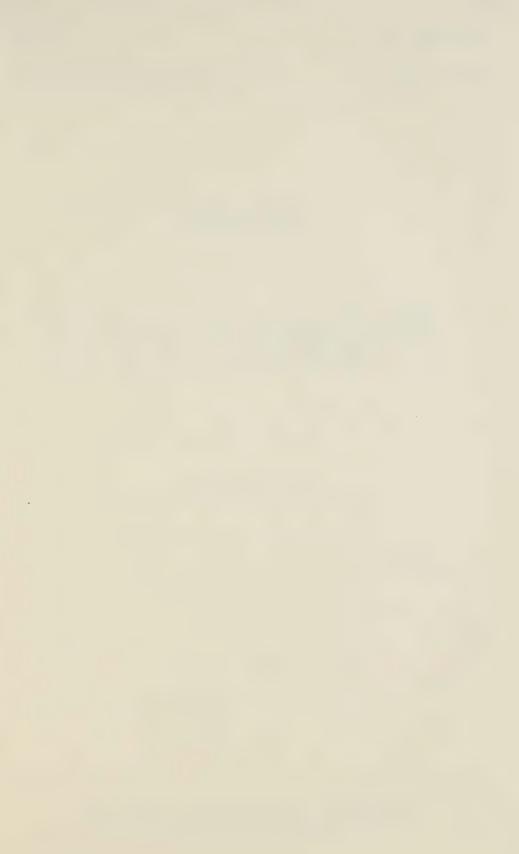
- (2) Every director or officer of a corporation who know- Idem ingly concurs in an offence under subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both.
- 10. The Lieutenant Governor in Council may make regu- Regulations lations.
 - (a) governing applications for registration or renewal of registration of rental accommodation agents and prescribing terms and conditions of registration;
 - (b) requiring rental accommodation agents to make returns and furnish information to the Registrar;
 - requiring the payment of fees on application for (c) registration as a rental accommodation agent or for renewal of registration, and prescribing the amounts thereof:
 - (d) requiring rental accommodation agents to be bonded in such form and terms and with such collateral security as are prescribed, and providing for the forfeiture of bonds and the disposition of the proceeds:

- (e) prescribing forms for the purposes of this Act and providing for their use;
- (f) prescribing the form of contracts for services of rental accommodation agents.

Commencement **11.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

12. The short title of this Act is the Rental Accommodation Agents Act, 1986.





Publications

2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986

Bill 163

An Act to repeal the Inflation Restraint Act, 1982 and the Public Sector Prices and Compensation Review Act, 1983

The Hon. R. Nixon

Treasurer of Ontario and Minister of Economics

1st Reading 2nd Reading 3rd Reading Royal Assent December 1st, 1986

EXPLANATORY NOTE

The repeal of these Acts is proposed because the periods of wage and price control covered by the Acts have expired. Changes in group compensation plans, implemented without following the filing procedure required under the *Public Sector Prices and Compensation Review Act, 1983*, are validated. The Inflation Restraint Board established under the *Inflation Restraint Act, 1982*, is, notwithstanding the repeal of the Act, continued in existence for the limited purpose of implementing the decision or order of a court made on a proceeding commenced before the day this repealing Act comes into force.

An Act to repeal the Inflation Restraint Act, 1982 and the Public Sector Prices and Compensation Review Act, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The Inflation Restraint Act, 1982, being chapter 55 of Repeals the Statutes of Ontario, 1982 and the Public Sector Prices and Compensation Review Act, 1983, being chapter 70 of the Statutes of Ontario, 1983, are repealed.

2.—(1) No change in a group compensation plan, as No invalidity defined in clause 1 (f) of the Public Sector Prices and Compensation Review Act, 1983, shall be invalidated by reason of pliance non-compliance with subsection 6 (3) of that Act.

non-comwith filing requirements

- (2) Subsection (1) applies to a change that was imple- Application mented before the coming into force of this Act.
- 3. Notwithstanding the repeal of the Inflation Restraint Inflation Act, 1982, by section 1 of this Act, the Inflation Restraint Board Board established under that Act is continued and has all the continued for powers and jurisdiction conferred on it thereunder for the purposes purposes only of implementing or giving effect to any order or decision of a court made on a proceeding commenced before the day this Act comes into force.

Restraint

- 4. This Act comes into force on the day it receives Royal Commence-Assent.
- 5. The short title of this Act is the Inflation Restraint and Short title Public Sector Prices and Compensation Review Repeal Act, 1986.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1987

Bill 163

(Chapter 2 Statutes of Ontario, 1987)

An Act to repeal the Inflation Restraint Act, 1982 and the Public Sector Prices and Compensation Review Act, 1983

The Hon, R. Nixon Treasurer of Ontario and Minister of Economics

> 1st Reading December 1st, 1986

2nd Reading January 27th, 1987

February 2nd, 1987 3rd Reading

Royal Assent February 3rd, 1987



An Act to repeal the Inflation Restraint Act, 1982 and the Public Sector Prices and Compensation Review Act, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The Inflation Restraint Act, 1982, being chapter 55 of Repeals the Statutes of Ontario, 1982 and the Public Sector Prices and Compensation Review Act, 1983, being chapter 70 of the Statutes of Ontario, 1983, are repealed.

2.—(1) No change in a group compensation plan, as No invalidity defined in clause 1 (f) of the Public Sector Prices and Compensation Review Act, 1983, shall be invalidated by reason of pliance non-compliance with subsection 6 (3) of that Act.

non-comwith filing requirements

(2) Subsection (1) applies to a change that was imple- Application mented before the coming into force of this Act.

3. Notwithstanding the repeal of the Inflation Restraint Inflation Act, 1982, by section 1 of this Act, the Inflation Restraint Board Board established under that Act is continued and has all the continued for powers and jurisdiction conferred on it thereunder for the purposes only of implementing or giving effect to any order or decision of a court made on a proceeding commenced before the day this Act comes into force.

Restraint certain

4. This Act comes into force on the day it receives Royal Commence-Assent.

5. The short title of this Act is the Inflation Restraint and Short title Public Sector Prices and Compensation Review Repeal Act, 1987.



2ND SESSION, 33RD LEGISLATURE, ONTARIO

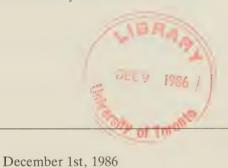
35 ELIZABETH II, 1986

Bill 164

An Act to repeal the Farm Loans Act and the Farm Loans Adjustment Act

The Hon. R. Nixon

Treasurer of Ontario and Minister of Economics



1st Reading 2nd Reading 3rd Reading Royal Assent

EXPLANATORY NOTE

The repeal of these Acts is proposed since the procedures contemplated by the Acts are no longer used. Investigation does not disclose any existing farm loan associations. However, the Act provides a mechanism for dissolving any farm loan association that may subsequently be found to exist. Although there are no outstanding loans under the Farm Loans Act, past experience indicates that some mortgages may not have been formally discharged when the loans were repaid. Therefore, the Act provides a mechanism to discharge such mortgages.

An Act to repeal the Farm Loans Act and the Farm Loans Adjustment Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The Farm Loans Act, being chapter 154 of the Revised Repeals Statutes of Ontario, 1980, and the Farm Loans Adjustment Act, being chapter 155 of the Revised Statutes of Ontario, 1980, are repealed.

2. Where it appears to the Lieutenant Governor in Coun-Dissolution cil that a farm loan association incorporated under the Farm associations Loans Act has ceased to operate but was not dissolved, the R.S.O. 1980, Lieutenant Governor in Council may by order dissolve the c. 154 farm loan association and make such provision as is considered appropriate for the disposal of its property and records.

3. Every mortgage to secure a loan made under the Farm Mortgages Loans Act is discharged and void.

discharged

4. This Act comes into force on the day it receives Royal Assent.

Commence-

5. The short title of this Act is the Farm Loans and Farm Short title Loans Adjustment Repeal Act, 1986.



Publication

Bill 164

(Chapter 3 Statutes of Ontario, 1987)

An Act to repeal the Farm Loans Act and the Farm Loans Adjustment Act

The Hon. R. Nixon

Treasurer of Ontario and Minister of Economics



1st Reading December 1st, 1986

2nd Reading January 27th, 1987

3rd Reading February 2nd, 1987

Royal Assent February 3rd, 1987



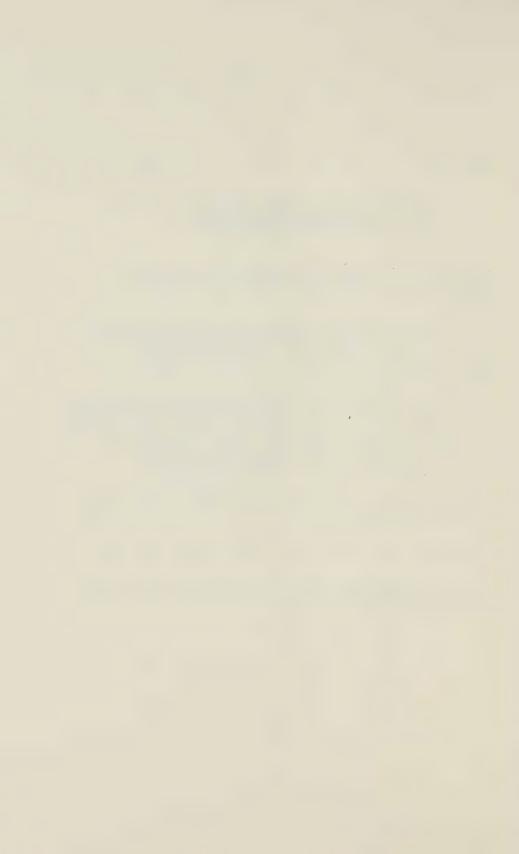
Bill 164 1987

An Act to repeal the Farm Loans Act and the Farm Loans Adjustment Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. The Farm Loans Act, being chapter 154 of the Revised Repeals Statutes of Ontario, 1980 and the Farm Loans Adjustment Act, being chapter 155 of the Revised Statutes of Ontario, 1980, are repealed.
- 2. Where it appears to the Lieutenant Governor in Coun-Dissolution cil that a farm loan association incorporated under the Farm of tarm loan associations Loans Act has ceased to operate but was not dissolved, the R.S.O. 1980. Lieutenant Governor in Council may by order dissolve the farm loan association and make such provision as is considered appropriate for the disposal of its property and records.

- 3. Every mortgage to secure a loan made under the Farm Mortgages Loans Act is discharged and void.
- Commence-**4.** This Act comes into force on the day it receives Royal Assent.
- 5. The short title of this Act is the Farm Loans and Farm Short title Loans Adjustment Repeal Act, 1987.



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2ND SESSION, 33RD LEGISLATURE, ONTARIO

35 ELIZABETH II, 1986



An Act to amend the Child and Family Services Act, 1984 and certain other Acts in relation to Adoption Disclosure

The Hon. J. Sweeney

Minister of Community and Social Services

1st Reading Dece 2nd Reading 3rd Reading Royal Assent

December 1st, 1986

EXPLANATORY NOTES

The Bill rewrites the provisions of the Child and Family Services Act, 1984 that deal with the protection and disclosure of information relating to adoptions and makes related amendments to two other Acts.

Some of the Bill's major features are:

- 1. Adult adopted persons and their birth relatives will be able to obtain identifying information about each other, by mutual consent, through the adoption disclosure register (formerly known as the voluntary disclosure register).
- 2. A framework for the disclosure of non-identifying information is also provided. ("Identifying information" and "non-identifying information" will be defined in regulations.)
- 3. Counselling is to be made available when non-identifying information is disclosed, and is mandatory before identifying information is disclosed.
- 4. The position of Registrar of Adoption Information is created to oversee the disclosure of information and the provision of related services.
- 5. The Registrar may disclose identifying or non-identifying information to any person if someone's health, safety or welfare requires it.
- On the request of an adult adopted person, the Registrar will search for specific birth relatives.
- Information may be withheld if its disclosure might result in serious physical or emotional harm to any person.
- 8. Persons who are refused information are entitled to have the Child and Family Services Review Board (formerly known as the Children's Services Review Board) hold a hearing into the matter.
- 9. The Bill also provides for the disclosure of information relating to out of province adoptions.

SECTIONS 1 and 10 of the Bill. The Board's name is changed from "Children's Services Review Board" to "Child and Family Services Review Board".

SECTIONS 2, 3, 6 and 9 of the Bill. Consequential to section 7.

SECTIONS 4, 5 and 8 of the Bill. The term "adoptive parent" will be used throughout, rather than "adopting parent".

SECTION 7 of the Bill. Sections 155 and 156 of the Act are re-enacted with minor changes.

Section 157 of the Act deals with the position and duties of the Registrar of Adoption Information.

Section 158 of the Act makes it clear that all adoptions, including those completed before the current amendments become law, are covered.

Section 158a of the Act, which protects the confidentiality of adoption information once an adoption order has been made, is an expanded and revised version of former section 157. It also contains an exclusion of the *Freedom of Information and Protection of Privacy Act, 1986* (Bill 34).

Section 158b of the Act deals with the disclosure of non-identifying information. The persons described in subsection (3) may apply to the Registrar, a children's aid society or a licensee for non-identifying information. When the relevant information is disclosed, the applicant will also have an opportunity to receive counselling.

Section 158c of the Act (based in part on former section 158) deals with the adoption disclosure register, which is the mechanism for the disclosure of identifying information. The persons described in subsection (2) may apply to be named in the register. When an adult adopted person and one of his or her birth relatives are both named in the register, the Registrar will ensure that they receive counselling. Following this counselling, if both consent to an exchange of information, the Registrar will disclose the relevant identifying information, directly or through an appropriate society. (In the case of a person named in the register who lives outside Ontario, disclosure may also take place through an appropriate agency or individual in the jurisdiction where the person lives.) Counselling is mandatory at this stage.

If one of the two persons named in the register has died, cannot readily be found or apparently lacks capacity, disclosure to the other person can take place nevertheless.

Section 158d of the Act authorizes the Registrar to disclose identifying or non-identifying information to any person if someone's health, safety or welfare requires it.

Section 158e of the Act deals with searches. Adult adopted persons may have the Registrar search on their behalf for specific birth relatives. The Registrar will make a discreet and reasonable search and, if the search is successful, will ascertain whether the birth relative wishes to be named in the register in order to permit the exchange of identifying information.

If the search reveals that the birth relative has died or apparently lacks capacity, or if the search is unsuccessful, the Registrar is authorized to disclose identifying information to the adopted person, following the procedures described in section 158c, as if both were named in the register.

The Act will also contain authority to make regulations extending section 158e to birth relatives who wish to have searches made for adopted persons.

Section 158f of the Act deals with the disclosure of information that is kept by the Ministry or a society or licensee but relates to out of province adoptions. The persons described in subsection (2) may apply for non-identifying information of this kind. Identifying information may be forwarded to a child protection or child placement agency in the appropriate jurisdiction for disclosure in accordance with the laws of that jurisdiction.

Section 158g of the Act provides that identifying or non-identifying information may be withheld if its disclosure might result in serious physical or emotional harm to any person. In that case, the applicant must be notified of the reason for the refusal and the right to a review under section 158h.

Section 158h of the Act deals with the review of decisions to withhold information. Persons who are refused information are entitled to have the Child and Family Services Review Board hold a hearing into the matter. The Board may order the disclosure of all or part of the information or may confirm the original decision.

Section 158i of the Act protects the confidentiality of identifying information that becomes part of the record in a court proceeding.

Section 158j of the Act provides that fees and expenses may be charged for the services provided by the Registrar and by societies and licensees.

SECTION 11 of the Bill. Authority is provided to make regulations defining "identifying information" and "non-identifying information", to prescribe additional classes of persons who may request non-identifying information, to prescribe classes of persons who may

have the Registrar search on their behalf for adopted persons, to prescribe review procedures and additional powers and duties of the Board, and to prescribe fees and expenses that may be charged.

SECTION 12 of the Bill. Consequential to sections 1 and 10.

SECTION 13 of the Bill. Consequential amendments are made to the Vital Statistics Act to authorize the Registrar General to release an extract of information from the original birth registration, as described in proposed subsection 158c (6) of the Child and Family Services Act, 1984 (set out in section 7 of the Bill).

Bill 165 1986

An Act to amend the Child and Family Services Act, 1984 and certain other Acts in relation to Adoption Disclosure

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Paragraph 5 of subsection 3 (1) of the *Child and Family Services Act*, 1984, being chapter 55, is repealed and the following substituted therefor:
 - 5. "Board" means the Child and Family Services Review Board continued under Part IX (Licensing).
 - 2. Clause 130 (1) (a) of the said Act is repealed.
- **3.** Subclause 131 (4) (a) (iii) of the said Act is repealed and the following substituted therefor:
 - (iii) to obtain non-identifying information under section 158b and to participate in the adoption disclosure register maintained under clause 157 (2) (a).
- **4.** Clause 146 (2) (b) of the said Act is amended by striking out "adopting" in the second line and inserting in lieu thereof "adoptive".
- 5.—(1) Subsection 152 (2) of the said Act is amended by striking out "adopting" wherever it occurs and inserting in lieu thereof in each instance "adoptive".
- (2) Subsection 152 (3) of the said Act is amended by striking out "adopting" in the second line and in the third line and inserting in lieu thereof in each instance "adoptive".
- **6.** Section 154 of the said Act is amended by adding thereto the following subsection:

Definition

- (2) In this section, "birth parent" has the same meaning as in section 158b.
- 7. Sections 155, 156, 157 and 158 of the said Act are repealed and the following substituted therefor:

Parent to be informed on request **155.** At the request of a person whose consent to an adoption was required under clause 131 (2) (a) or a predecessor of that provision and was given or was dispensed with, any society or the licensee that placed the child for adoption shall inform the person whether an order has been made for the child's adoption.

Definition

156.—(1) In this section, "court" includes the District Court.

Papers to be sealed up (2) Subject to subsections (3) and 158c (6), the documents used upon an application for an adoption order under this Part or a predecessor of this Part shall be sealed up together with a certified copy of the original order and filed in the office of the court by the proper officer of the court, and shall not be open for inspection except upon an order of the court or the written direction of the Registrar of Adoption Information appointed under subsection 157 (1).

Transmission of order

- (3) Within thirty days after an adoption order is made under this Part, the proper officer of the court shall cause a sufficient number of certified copies of it to be made, under the seal of the proper certifying authority, and shall transmit,
 - (a) the original order to the adoptive parent;
 - (b) one certified copy to the Registrar of Adoption Information;

R.S.O. 1980, c. 524 (c) one certified copy to the Registrar General under the *Vital Statistics Act*, or, if the adopted child was born outside Ontario, two certified copies;

R.S.C. 1970, c. I-6 (d) if the adopted child is an Indian, one certified copy to the Registrar under the *Indian Act* (Canada).

REGISTRAR OF ADOPTION INFORMATION

Registrar of Adoption Information **157.**—(1) The Minister may appoint an employee of the Ministry as Registrar of Adoption Information for the purposes of this section and sections 158 to 158j.

Duties of Registrar

(2) The Registrar shall,

- (a) maintain a register for the purposes of section 158c;
- (b) ensure that counselling is provided to persons who receive identifying information from the Registrar:
- (c) ensure that counselling is made available to persons who receive non-identifying information from the Registrar, who are or may wish to be named in the register, or who are concerned that they may be affected by the disclosure of identifying information:
- (d) have searches conducted in accordance with subsection 158e (3).
- (3) The Registrar may, in writing, authorize other employ- Delegation ees of the Ministry to exercise any or all of the Registrar's powers and perform any or all of the Registrar's duties.

of Registrar's

(4) The counselling referred to in this section and in sec-Counselling tions 158b (disclosure of non-identifying information), 158c (adoption disclosure register) and 158f (persons adopted outside Ontario) shall be provided by persons who are, in the opinion of the Registrar or a local director, qualified to do so.

158. Sections 158a to 158j apply whether the adoption Application order was made before or after section 7 of the Adoption Disclosure Statute Law Amendment Act, 1986 comes into force.

158a to 158j 1986, c.-

CONFIDENTIALITY OF ADOPTION RECORDS

158a.—(1) Despite any other Act, after an adoption order Adoption is made, no person shall inspect, remove, alter or permit the confidential inspection, removal or alteration of information that relates to the adoption and is kept,

- (a) by the Ministry;
- (b) by a society or licensee; or
- (c) in the adoption disclosure register maintained under clause 157 (2) (a),

or disclose or permit the disclosure of such information that the person obtained from the records of the Ministry, including the register, or from the records of a society or licensee.

(2) Subsection (1) does not apply to,

Exceptions

- (a) the disclosure of information by a person who obtained it before the adoption order was made, if the information was obtained in accordance with this Act and the regulations or with the consent of the person to whom the information relates;
- (b) the disclosure of non-identifying information in accordance with section 158b or 158f (persons adopted outside Ontario);
- (c) the disclosure of identifying information in accordance with section 158c (adoption disclosure register) or 158f;
- (d) the disclosure of identifying or non-identifying information in accordance with section 158d (disclosure to protect health, safety or welfare);
- (e) the disclosure of information in accordance with an order of the Board under subsection 158h (10);
- (f) the routine maintenance and updating of records by the Ministry or a society or licensee;
- (g) the release by the Registrar of Adoption Information of a copy of an adoption order to,
 - (i) the adoptive parent,
 - (ii) the adopted person or any other person if, in the Registrar's opinion, it is desirable that he or she receive a copy of the adoption order, or
 - (iii) a governmental authority that requires the copy to issue a birth certificate, passport or visa;
- (h) the inspection, by a person named in subsection (3), of information kept by the Ministry or a society or licensee, or the disclosure of such information to such a person;
- (i) the disclosure of information to a person who is engaged in research, in accordance with subsection (4).
- (3) Clause (2) (h) applies in respect of:
 - 1. The Minister.

Persons entitled to share information

- 2. The Registrar of Adoption Information.
- 3. A Director, or an employee of the Ministry who has a Director's written authority.
- A local director, or an employee of a society who 4. has the local director's written authority.
- A licensee who is an individual, a director of a 5. licensee that is a corporation, or an employee of a licensee who has the licensee's written authority.
- A child protection or child placement agency that is 6. recognized in another jurisdiction.
- (4) A person who is engaged in research may, with the writ-Research ten approval of the Registrar of Adoption Information or, in the case of information kept by a society, with the local director's written approval, inspect and use information that relates to adoptions, but shall not,

- (a) use or communicate the information for any purpose except research, academic pursuits or the compilation of statistical data; or
- (b) communicate any identifying information.
- (5) The Freedom of Information and Protection of Privacy Non-Act, 1986 does not apply to information that relates to an of 1986, c.adoption.
- (6) Subsection (5) does not come into force until a day to Coming into force be named by proclamation of the Lieutenant Governor. of subs. (5)

DISCLOSURE OF NON-IDENTIFYING INFORMATION

158b.—(1) In this section and in sections 158c to 158j, Definition "Registrar" means the Registrar of Adoption Information appointed under subsection 157 (1).

(2) In this section and in sections 158c, 158d and 158e,

Idem

"adopted person" means a person who was adopted in Ontario:

"birth grandparent" means any parent of a birth parent;

"birth parent" means an adopted person's biological mother or father, and includes a person whose consent to another person's adoption was required under clause 131 (2) (a) or a predecessor of that provision and was given or was dispensed with;

"birth sibling" means a child of the same birth parent as an adopted person, and includes the birth parent's adopted child and a person whom the birth parent has demonstrated a settled intention to treat as a child of his or her family;

"register" means the register maintained under clause 157 (2) (a).

Who may request information

- (3) Each of the following persons may make a request to the Registrar for non-identifying information that relates to an adoption:
 - 1. The adopted person, if he or she has attained the age of eighteen years or has the written consent of an adoptive parent.
 - 2. An adoptive parent.
 - 3. A birth parent or birth grandparent.
 - 4. A birth sibling who has attained the age of eighteen years.
 - 5. A person who is a member of a prescribed class, if the person has the written consent of the adopted person and the adopted person would be entitled to make the request or, if not, the written consent of an adoptive parent.
 - 6. Any other person if, in the Registrar's opinion, it is desirable that the person be able to request non-identifying information as if he or she were a birth parent.

Disclosure of information

- (4) When a person makes a request under subsection (3), the Registrar shall do one of the following:
 - 1. Disclose to the person all the relevant non-identifying information in the Ministry's possession that relates to the adoption.
 - 2. Forward that information to a society or licensee for disclosure to the person in accordance with subsection (6).
 - 3. If the person lives outside Ontario, disclose that information to a child protection or child placement

agency that is recognized in the jurisdiction where the person lives, or to an individual in that jurisdiction who, in the Registrar's opinion, is qualified to provide counselling.

- 4. Refer the person's request to a society or licensee that has the relevant information.
- (5) When the Registrar discloses information under subsec- Counselling tion (4), he or she shall also ensure that counselling is made available to the person receiving the information.

ADOPTION DISCLOSURE

(6) When the Registrar forwards information to a society or Information licensee under subsection (4), the society or licensee shall disclose it to the person who requested it and shall also make licensee counselling available to him or her.

forwarded to

(7) Subsections (3), (4), (5) and (6) also apply with neces- Societies sary modifications to societies and licensees.

(8) A person who receives information under subsection (4) or (6) may disclose it to any person.

Further disclosure

ADOPTION DISCLOSURE REGISTER

158c.—(1) After an adoption order is made in Ontario, Disclosure of identifying information that relates to the adoption may be information disclosed in accordance with this section or section 158d (disclosure to protect health, safety or welfare).

(2) Each of the following persons may apply to a society or Who may to the Registrar to be named in the register:

apply to be named in register

- 1. An adopted person who has attained the age of eighteen years.
- 2. The birth parent or birth grandparent of an adopted person.
- The birth sibling of an adopted person, if the birth 3. sibling has attained the age of eighteen years.
- 4. Any other person if, in the Registrar's opinion, it is desirable that the person be named in the register as if he or she were a birth parent.
- (3) A society that receives an application shall promptly Society send it to the Registrar.

to forward application Entry in register, etc.

(4) On receiving an application, the Registrar shall enter the applicant's name in the register and then make a search to determine whether the adopted person and his or her birth parent, birth grandparent or birth sibling or a person described in paragraph 4 of subsection (2) are both named in the register.

Further consents

(5) If the Registrar determines that an adopted person and his or her birth parent, birth grandparent or birth sibling or a person described in paragraph 4 of subsection (2) are both named in the register, the Registrar shall, after ensuring that each of them receives counselling, give both persons an opportunity to consent in writing to the disclosure of information in accordance with subsections (8) and (9).

Registrar to compile relevant material

- (6) If both persons give the further consent referred to in subsection (5), the Registrar shall compile the material described in paragraphs 1, 2 and 3:
 - 1. All relevant identifying information from the records of the Ministry and of societies and licensees.
 - 2. If the adopted person requests it, copies of the documents referred to in subsection 156 (2) (court file).
 - 3. If the adopted person requests it, an extract of information from his or her original birth registration kept by the Registrar General under the *Vital Statistics Act*.

R.S.O. 1980, c. 524

Idem

(7) The compiled material shall include only information that pertains to the adopted person or the other person named in the register and shall not include a copy of the adopted person's original birth registration.

Disclosure by Registrar (8) The Registrar shall ensure that the compiled material is promptly disclosed to the adopted person and also to the other person named in the register, separately and in accordance with one or more of the methods described in subsection (9).

Idem

- (9) The Registrar may,
 - (a) make the compiled material available to the adopted person or the other person named in the register, or to both, first ensuring that each person to whom the material is made available receives counselling;

- (b) forward the compiled material to a society that he or she considers appropriate to undertake disclosure to the adopted person or the other person named in the register, or to both;
- if the adopted person or the other person named in the register lives outside Ontario, forward the compiled material to a child protection or child placement agency that is recognized in the jurisdiction where the person lives, or to an individual in that jurisdiction, but only if the Registrar is satisfied that the person will receive appropriate counselling.
- (10) If a person whose further consent to disclosure would Exception: be required is named in the register but has died, cannot readily be found, or appears to lack capacity as defined in clause 4 (1) (a), the Registrar may disclose information to the other person named in the register in accordance with subsection (9) without the first-named person's further consent.

(11) A society that receives compiled material under clause Duty of (9) (b) shall promptly make it available to the adopted person or the other person named in the register, or both, as the case may be, first ensuring that each person to whom the material is made available receives counselling.

society

(12) If the society's records contain identifying information Additional that pertains to the adopted person or the other person named in the register and that is not included in the compiled material, the society shall disclose the information in the same manner as the compiled material.

(13) A society shall provide counselling to persons who Duty of receive identifying information from the society, and shall make counselling available to persons who are named or may wish to be named in the register or who are concerned that they may be affected by the disclosure of identifying information.

(14) A person who is named in the register and receives Further information under subsection (9), (10), (11) or (12) may disclose it to any person.

DISCLOSURE TO PROTECT HEALTH, SAFETY OR WELFARE

158d.—(1) The Registrar may disclose identifying or nonidentifying information that relates to an adoption to any person if, in the Registrar's opinion, the health, safety or welfare safety or of that person or of any other person requires the disclosure.

Disclosure to protect health, welfare

Application of subs.(1)

(2) Subsection (1) applies whether the adoption order was made in Ontario or elsewhere.

Further disclosure

(3) A person who receives information under this section in the course of his or her professional or official duties may disclose it further only for the purpose of protecting a person's health, safety or welfare.

Idem

(4) A person who receives information under this section otherwise than as described in subsection (3) may disclose it to any person.

SEARCHES

Request for search by Registrar **158e.**—(1) An adopted person who has attained the age of eighteen years may ask the Registrar to search on his or her behalf for a specific person in one of the following categories:

- 1. A person whose consent to the adoption was required under clause 131 (2) (a) or a predecessor of that provision and was given or was dispensed with.
- 2. A person who has acknowledged that he is the adopted person's biological father.
- 3. A parent of a person described in paragraph 1 or 2.
- 4. A birth sibling of the adopted person who has also attained the age of eighteen years.

Idem, member of prescribed class (2) A person who is a member of a prescribed class may ask the Registrar to search on his or her behalf for a specific adopted person who has attained the age of eighteen years.

Duty of Registrar (3) The Registrar shall have a discreet and reasonable search made for the person mentioned in the request, and shall seek to ascertain whether that person wishes to be named in the register.

Exception re disclosure

(4) If the Registrar discovers that the person mentioned in the request has died or appears to lack capacity as defined in clause 4 (1) (a), or if the person cannot be found despite a discreet and reasonable search, the Registrar may disclose information to the person who made the request, in accordance with section 158c, as if both persons were named in the register.

PERSONS ADOPTED OUTSIDE ONTARIO

158f.—(1) In this section,

Definitions

- "adopted person" means a person who was adopted outside Ontario:
- "birth parent" means an adopted person's biological mother or father, or a person whose consent to another person's adoption was given or dispensed with:
- "birth grandparent" means any parent of a birth parent;
- "birth sibling" means a child of the same birth parent as an adopted person, and includes the birth parent's adopted child and a person whom the birth parent has demonstrated a settled intention to treat as a child of his or her family;
- "out of province adoption" means an adoption where the adoption order was made outside Ontario.
- (2) Each of the following persons may make a request to the Registrar for non-identifying information that relates to an out of province adoption:

Who may request identifying

- 1. The adopted person, if he or she has attained the age of eighteen years or has the written consent of an adoptive parent.
- 2. An adoptive parent.
- 3. A birth parent or birth grandparent.
- 4. A birth sibling who has attained the age of eighteen years.
- Any other person if, in the opinion of the Registrar 5. or local director, it is desirable that the person receive non-identifying information as if he or she were a birth parent.
- (3) When a person makes a request under subsection (2), Disclosure the Registrar shall disclose to the person all the relevant non-information identifying information in the Ministry's possession that relates to the adoption.

(4) When the Registrar discloses information under subsec- Counselling tion (3), he or she shall also ensure that counselling is made available to the person receiving the information, to the extent that it is feasible to do so.

Societies and licensees (5) Subsections (2), (3) and (4) also apply with necessary modifications to societies and licensees.

Disclosure of identifying information to agency outside Ontario (6) If identifying information that relates to an out of province adoption is kept by the Ministry or by a society, the Registrar may provide the information to a child protection or child placement agency that is recognized in another jurisdiction, for disclosure in accordance with the laws of that jurisdiction.

Further disclosure

(7) A person who receives information under this section may disclose it to any person.

REFUSAL OF INFORMATION

Refusal to disclose nonidentifying information

- **158g.**—(1) The disclosure of non-identifying information that a person would otherwise be entitled to receive under section 158b or 158f may be refused,
 - (a) by the Registrar if, in his or her opinion, the disclosure might result in serious physical or emotional harm to any person;
 - (b) by a society if, in the local director's opinion, the disclosure might result in serious physical or emotional harm to any person;
 - (c) by a licensee if, in the Registrar's opinion, the disclosure might result in serious physical or emotional harm to any person.

Refusal to disclose identifying information (2) The disclosure of identifying information that a person would otherwise be entitled to receive under section 158c may be refused by the Registrar or by a society if, in the Registrar's opinion, the disclosure might result in serious physical or emotional harm to any person.

Notice of refusal

(3) When the disclosure of information is refused under this section, the Registrar or local director, as the case may be, shall promptly give the person seeking the information notice of the refusal, the reason for it and the person's right to a review under section 158h.

REVIEW

Review by Child and Family Services Review Board **158h.**—(1) A person who is refused information in accordance with section 158g may, within twenty days of receiving notice of the decision, request that the Board review the matter.

- (2) The Board shall conduct a review with respect to the Duty of request, following the prescribed procedures.
- (3) Unless the parties to a review agree otherwise, the Hearings Board shall hold a hearing.
 - (4) The parties to a review are,

Parties

- (a) the person who requested the review;
- (b) the person who gave notice of the decision to withhold the information
- (5) At any stage in a review, the Board shall add the Regis-Registrar trar as a party on his or her request.
- (6) The Board may examine the information without dis- Information closing it to the person who requested the review.

need not be disclosed in course of review

(7) The Board may receive any evidence and submissions Idem, without disclosing them to the person who requested the review, and when the Board holds a hearing it may hear any submissions part of the evidence and submissions in that person's absence.

evidence

(8) When the Board acts under subsection (6) or (7), the Lawyer or lawyer or agent of the person who requested the review is nevertheless entitled to examine the information and to be excluded present, to cross-examine witnesses and to make submissions, or to examine the evidence and submissions and respond to them, as the case may be, on condition that the lawyer or agent undertakes not to reveal the information, evidence and submissions to his or her client.

agent not

(9) The Board shall complete its review and make a deci- Time for sion within ninety days of receiving notice of the request, unless the parties consent to a longer period.

(10) After conducting a review, the Board may make an order requiring the Registrar, society or licensee, as the case may be, to disclose all or part of the information to the person, or may make an order confirming the refusal.

(11) The Board may include conditions in its order.

Conditions

(12) Whether the Board holds a hearing or not, it shall give its decision in writing, with reasons.

decision with reasons

INFORMATION IN COURT FILE

Application

158i.—(1) This section applies to court proceedings that relate to decisions made by the Board under section 158h or by the Registrar, local directors or licensees under sections 158a, 158b, 158c, 158d, 158e, 158f and 158g.

Examination of identifying information in court file (2) Unless the court orders otherwise, only the court may examine identifying information that is in the court file and comes from the records of the Ministry or of a society or licensee.

Disclosure of information

(3) No person shall, without the court's permission, disclose identifying information described in subsection (2) that he or she obtained from the court file.

FEES AND EXPENSES

Fees and expenses

- **158j.** The Registrar, societies and licensees may charge the prescribed fees for services provided under clause 158a (2) (g) and sections 158b, 158c, 158e and 158f, and may charge up to the prescribed amounts for expenses incurred in providing services under sections 158b, 158c, 158e and 158f.
- **8.** Clause 159 (f) of the said Act is amended by striking out "adopting" in the second line and inserting in lieu thereof "adoptive".
- **9.** Clause 163 (2) (d) of the said Act is repealed and the following substituted therefor:
 - (d) in the adoption disclosure register maintained under clause 157 (2) (a) of Part VII.
- **10.**—(1) The title preceding section 190 of the said Act is repealed and the following substituted therefor:

CHILD AND FAMILY SERVICES REVIEW BOARD

(2) Subsection 190 (1) of the said Act is repealed and the following substituted therefor:

Child and Family Services Review Board (1) The Board known as the "Children's Services Review Board" is continued under the name "Child and Family Services Review Board".

Idem

(1a) The Board is composed of the prescribed number of members appointed by the Lieutenant Governor in Council and has the powers and duties given to it by this Act and the regulations.

- 11.—(1) Clause 203 (e) of the said Act is repealed and the following substituted therefor:
 - (e) defining "identifying information" and "non-identifying information" for the purposes of sections 157 to 158i:
 - (ea) prescribing classes of persons for the purposes of paragraph 5 of subsection 158b (3) (persons who may request non-identifying information);
 - (eb) prescribing classes of persons for the purposes of subsection 158e (2) (search by Registrar);
 - (ec) prescribing additional powers, duties and procedures for the Board under section 158h;
 - (ed) prescribing fees and amounts for the purposes of section 158j.
- (2) Section 203 of the said Act is amended by adding thereto the following subsection:
- (2) Regulations made under clause (1) (ed) may prescribe Idem different fees and amounts for the Registrar, for societies and for licensees.
- **12.** Clause 1 (c) of the Day Nurseries Act, being chapter 111 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1984, chapter 55, section 215, is repealed and the following substituted therefor:
 - "Board" means the Child and Family Services Review Board continued under Part IX (Licensing) of the Child and Family Services Act, 1984.

1984, c. 55

- 13.—(1) The Vital Statistics Act, being chapter 524 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:
- 24a. Although an adopted person's original birth registra- Extract of tion has been sealed pursuant to subsection 24 (2), the Registobe trar General shall, at the request of the Registrar of Adoption provided to Information appointed under the Child and Family Services of Adoption Act, 1984, provide the Registrar with the prescribed information tion from the original birth registration.

information Registrar 1984, c. 55

(2) Section 55 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 9, section 17, is further amended by adding thereto the following clause:

(v) prescribing information for the purposes of section 24a (extract of information to be provided to Registrar of Adoption Information).

Commencement 14. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

15. The short title of this Act is the Adoption Disclosure Statute Law Amendment Act, 1986.

Bill 165

An Act to amend the Child and Family Services Act, 1984 and certain other Acts in relation to Adoption Disclosure

The Hon. J. Sweeney

Minister of Community and Social Services

1st Reading
2nd Reading

3rd Reading
Royal Assent

(Reprinted as amended by the Committee of the Whole House)

December 1st, 1986

January 13th, 1987

EXPLANATORY NOTES

The Bill rewrites the provisions of the *Child and Family Services Act, 1984* that deal with the protection and disclosure of information relating to adoptions and makes related amendments to two other Acts.

Some of the Bill's major features are:

- 1. Adult adopted persons and their birth relatives will be able to obtain identifying information about each other, by mutual consent, through the adoption disclosure register (formerly known as the voluntary disclosure register).
- 2. A framework for the disclosure of non-identifying information is also provided. ("Identifying information" and "non-identifying information" are defined in subsection 158b (2) of the Act and will be further defined in regulations.)
- 3. Counselling is to be made available when non-identifying information is disclosed, and is mandatory before identifying information is disclosed.
- 4. The position of Registrar of Adoption Information is created to oversee the disclosure of information and the provision of related services.
- 5. The Registrar may disclose identifying or non-identifying information to any person if someone's health, safety or welfare requires it.
- On the request of an adult adopted person, the Registrar will search for specific birth relatives.
- Information may be withheld if its disclosure might result in serious physical or emotional harm to any person.
- 8. Persons who are refused information are entitled to have the Child and Family Services Review Board (formerly known as the Children's Services Review Board) hold a hearing into the matter.
- The Bill also provides for the disclosure of information relating to out of province adoptions.

SECTIONS 1 and 10 of the Bill. The Board's name is changed from "Children's Services Review Board" to "Child and Family Services Review Board".

SECTIONS 2, 3, 6 and 9 of the Bill. Consequential to section 7.

SECTIONS 4, 5 and 8 of the Bill. The term "adoptive parent" will be used throughout, rather than "adopting parent".

SECTION 7 of the Bill. Sections 155 and 156 of the Act are re-enacted with minor changes.

Section 157 of the Act deals with the position and duties of the Registrar of Adoption Information.

Section 158 of the Act makes it clear that all adoptions, including those completed before the current amendments become law, are covered.

Section 158a of the Act, which protects the confidentiality of adoption information once an adoption order has been made, is an expanded and revised version of former section 157. It also contains an exclusion of the *Freedom of Information and Protection of Privacy Act, 1986* (Bill 34).

Section 158b of the Act deals with the disclosure of non-identifying information. The persons described in subsection (4) may apply to the Registrar, a children's aid society or a licensee for non-identifying information. When the relevant information is disclosed, the applicant will also have an opportunity to receive counselling.

Section 158c of the Act (based in part on former section 158) deals with the adoption disclosure register, which is the mechanism for the disclosure of identifying information. The persons described in subsection (2) may apply to be named in the register. When an adult adopted person and one of his or her birth relatives are both named in the register, the Registrar will ensure that they receive counselling. Following this counselling, if both consent to an exchange of information, the Registrar will disclose the relevant identifying information, directly or through an appropriate society. (In the case of a person named in the register who lives outside Ontario, disclosure may also take place through an appropriate agency or individual in the jurisdiction where the person lives.) Counselling is mandatory at this stage.

If one of the two persons named in the register has died, cannot be found or apparently lacks capacity, disclosure to the other person can take place nevertheless.

Section 158d of the Act authorizes the Registrar to disclose identifying or non-identifying information to any person if someone's health, safety or welfare requires it.

Section 158e of the Act deals with searches. Adult adopted persons may have the Registrar search on their behalf for specific birth relatives. The Registrar will make a discreet and reasonable search and, if the search is successful, will ascertain whether the birth relative wishes to be named in the register in order to permit the exchange of identifying information.

If the search reveals that the birth relative has died or apparently lacks capacity, or if the search is unsuccessful, the Registrar is authorized to disclose identifying information to the adopted person, following the procedures described in section 158c, as if both were named in the register.

The Act will also contain authority to make regulations extending section 158e to birth relatives who wish to have searches made for adopted persons.

Section 158f of the Act deals with the disclosure of information that is kept by the Ministry or a society or licensee but relates to out of province adoptions. The persons described in subsection (2) may apply for non-identifying information of this kind. Identifying information may be forwarded to a child protection or child placement agency in the appropriate jurisdiction for disclosure in accordance with the laws of that jurisdiction.

Section 158g of the Act provides that identifying or non-identifying information may be withheld if its disclosure might result in serious physical or emotional harm to any person. In that case, the applicant must be notified of the reason for the refusal and the right to a review under section 158h.

Section 158h of the Act deals with the review of decisions to withhold information. Persons who are refused information are entitled to have the Child and Family Services Review Board hold a hearing into the matter. The Board may order the disclosure of all or part of the information or may confirm the original decision.

Section 158i of the Act protects the confidentiality of identifying information that becomes part of the record in a court proceeding.

Section 158j of the Act provides that fees and expenses may be charged for the services provided by the Registrar and by societies and licensees.

SECTION 11 of the Bill. Authority is provided to make regulations <u>further</u> defining "identifying information" and "non-identifying information", to prescribe additional classes of persons who may request non-identifying information, to prescribe classes of

persons who may have the Registrar search on their behalf for adopted persons, to prescribe review procedures and additional powers and duties of the Board, and to prescribe fees and expenses that may be charged.

SECTION 12 of the Bill. Consequential to sections 1 and 10.

SECTION 13 of the Bill. Consequential amendments are made to the *Vital Statistics Act* to authorize the Registrar General to release an extract of information from the original birth registration, as described in proposed subsection 158c (6) of the *Child and Family Services Act*, 1984 (set out in section 7 of the Bill).

Bill 165 1987

An Act to amend the Child and Family Services Act, 1984 and certain other Acts in relation to Adoption Disclosure

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Paragraph 5 of subsection 3 (1) of the *Child and Family Services Act*, 1984, being chapter 55, is repealed and the following substituted therefor:
 - 5. "Board" means the Child and Family Services Review Board continued under Part IX (Licensing).
 - 2. Clause 130 (1) (a) of the said Act is repealed.
- **3.** Subclause 131 (4) (a) (iii) of the said Act is repealed and the following substituted therefor:
 - (iii) to obtain non-identifying information under section 158b and to participate in the adoption disclosure register maintained under clause 157 (2) (a).
- **4.** Clause 146 (2) (b) of the said Act is amended by striking out "adopting" in the second line and inserting in lieu thereof "adoptive".
- 5.—(1) Subsection 152 (2) of the said Act is amended by striking out "adopting" wherever it occurs and inserting in lieu thereof in each instance "adoptive".
- (2) Subsection 152 (3) of the said Act is amended by striking out "adopting" in the second line and in the third line and inserting in lieu thereof in each instance "adoptive".
- **6.** Section 154 of the said Act is amended by adding thereto the following subsection:

Definition

- (2) In this section, "birth parent" has the same meaning as in section 158b.
- 7. Sections 155, 156, 157 and 158 of the said Act are repealed and the following substituted therefor:

Parent to be informed on request **155.** At the request of a person whose consent to an adoption was required under clause 131 (2) (a) or a predecessor of that provision and was given or was dispensed with, any society or the licensee that placed the child for adoption shall inform the person whether an order has been made for the child's adoption.

Definition

156.—(1) In this section, "court" includes the District Court.

Papers to be sealed up (2) Subject to subsections (3) and 158c (6), the documents used upon an application for an adoption order under this Part or a predecessor of this Part shall be sealed up together with a certified copy of the original order and filed in the office of the court by the proper officer of the court, and shall not be open for inspection except upon an order of the court or the written direction of the Registrar of Adoption Information appointed under subsection 157 (1).

Transmission of order

- (3) Within thirty days after an adoption order is made under this Part, the proper officer of the court shall cause a sufficient number of certified copies of it to be made, under the seal of the proper certifying authority, and shall transmit,
 - (a) the original order to the adoptive parent;
 - (b) one certified copy to the Registrar of Adoption Information;

R.S.O. 1980, c. 524 (c) one certified copy to the Registrar General under the *Vital Statistics Act*, or, if the adopted child was born outside Ontario, two certified copies;

R.S.C. 1970, c. I-6 (d) if the adopted child is an Indian, one certified copy to the Registrar under the *Indian Act* (Canada).

REGISTRAR OF ADOPTION INFORMATION

Registrar of Adoption Information **157.**—(1) The Minister may appoint an employee of the Ministry as Registrar of Adoption Information for the purposes of this section and sections 158 to 158j.

Duties of Registrar (2) The Registrar shall,

Bill 165

- maintain a register for the purposes of section 158c; (a)
- (b) ensure that counselling is provided to persons who receive identifying information from the Registrar;
- ensure that counselling is made available to persons who receive non-identifying information from the Registrar, who are or may wish to be named in the register, or who are concerned that they may be affected by the disclosure of identifying information:
- (d) have searches conducted in accordance with subsection 158e (3).
- (3) The Registrar may, in writing, authorize other employ- Delegation ees of the Ministry to exercise any or all of the Registrar's powers and perform any or all of the Registrar's duties.

of Registrar's powers and

(4) The counselling referred to in this section and in sec-Counselling tions 158b (disclosure of non-identifying information), 158c (adoption disclosure register) and 158f (persons adopted outside Ontario) shall be provided by persons who are, in the opinion of the Registrar or a local director, qualified to do so.

158. Sections 158a to 158j apply whether the adoption Application order was made before or after section 7 of the Adoption Dis- 158a to 158i closure Statute Law Amendment Act. 1987 comes into force.

1987, c. ...

CONFIDENTIALITY OF ADOPTION RECORDS

158a.—(1) Despite any other Act, after an adoption order Adoption information is made, no person shall inspect, remove, alter or permit the confidential inspection, removal or alteration of information that relates to the adoption and is kept,

- (a) by the Ministry;
- (b) by a society or licensee; or
- in the adoption disclosure register maintained under clause 157 (2) (a),

or disclose or permit the disclosure of such information that the person obtained from the records of the Ministry, including the register, or from the records of a society or licensee.

(2) Subsection (1) does not apply to,

- (a) the disclosure of information by a person who obtained it before the adoption order was made, if the information was obtained in accordance with this Act and the regulations or with the consent of the person to whom the information relates;
- (b) the disclosure of non-identifying information in accordance with section 158b or 158f (persons adopted outside Ontario);
- (c) the disclosure of identifying information in accordance with section 158c (adoption disclosure register) or 158f;
- (d) the disclosure of identifying or non-identifying information in accordance with section 158d (disclosure to protect health, safety or welfare);
- (e) the disclosure of information in accordance with an order of the Board under subsection 158h (10);
- (f) the routine maintenance and updating of records by the Ministry or a society or licensee;
- (g) the release by the Registrar of Adoption Information of a copy of an adoption order to,
 - (i) the adoptive parent,
 - (ii) the adopted person or any other person if, in the Registrar's opinion, it is desirable that he or she receive a copy of the adoption order, or
 - (iii) a governmental authority that requires the copy to issue a birth certificate, passport or visa;
- (h) the inspection, by a person named in subsection (3), of information kept by the Ministry or a society or licensee, or the disclosure of such information to such a person;
- (i) the disclosure of information to a person who is engaged in research, in accordance with subsection (4).
- (3) Clause (2) (h) applies in respect of:
 - 1. The Minister.

Persons entitled to share information

- 2. The Registrar of Adoption Information.
- A Director, or an employee of the Ministry who has a Director's written authority.
- A local director, or an employee of a society who 4. has the local director's written authority.
- 5. A licensee who is an individual, a director of a licensee that is a corporation, or an employee of a licensee who has the licensee's written authority.
- A child protection or child placement agency that is recognized in another jurisdiction.
- (4) A person who is engaged in research may, with the writ-Research ten approval of the Registrar of Adoption Information or, in the case of information kept by a society, with the local director's written approval, inspect and use information that relates to adoptions, but shall not,

- use or communicate the information for any purpose except research, academic pursuits or the compilation of statistical data; or
- (b) communicate any identifying information.
- (5) The Freedom of Information and Protection of Privacy Non-Act, 1987 does not apply to information that relates to an of application adoption.

1987, c. ...

(6) Subsection (5) does not come into force until a day to Coming be named by proclamation of the Lieutenant Governor.

of subs. (5)

DISCLOSURE OF NON-IDENTIFYING INFORMATION

158b.—(1) In this section and in sections 158c to 158j, Definition "Registrar" means the Registrar of Adoption Information appointed under subsection 157 (1).

- (2) In this section and in sections 157, 158a and 158c to Idem 158i.
- "identifying information" means information whose disclosure, alone or in combination with other information, will in the circumstances reveal the identity of the person to whom it relates:
- "non-identifying information" means information that is not identifying information.

Idem

- (3) In this section and in sections 158c, 158d and 158e,
- "adopted person" means a person who was adopted in Ontario;
- "birth grandparent" means any parent of a birth parent;
- "birth parent" means an adopted person's biological mother or father, and includes a person whose consent to another person's adoption was required under clause 131 (2) (a) or a predecessor of that provision and was given or was dispensed with;
- "birth sibling" means a child of the same birth parent as an adopted person, and includes the birth parent's adopted child and a person whom the birth parent has demonstrated a settled intention to treat as a child of his or her family;
- "register" means the register maintained under clause 157 (2) (a).

Who may request information

- (4) Each of the following persons may make a request to the Registrar for non-identifying information that relates to an adoption:
 - 1. The adopted person, if he or she has attained the age of eighteen years or has the written consent of an adoptive parent.
 - 2. An adoptive parent.
 - 3. A birth parent or birth grandparent.
 - 4. A birth sibling who has attained the age of eighteen years.
 - 5. A person who is a member of a prescribed class, if the person has the written consent of the adopted person and the adopted person would be entitled to make the request or, if not, the written consent of an adoptive parent.
 - 6. Any other person if, in the Registrar's opinion, it is desirable that the person be able to request non-identifying information as if he or she were a birth parent.

Disclosure of information

 $(\underline{5})$ When a person makes a request under subsection (4), the Registrar shall do one of the following:

- Disclose to the person all the relevant non-identifying information in the Ministry's possession that relates to the adoption.
- Forward that information to a society or licensee for 2. disclosure to the person in accordance with subsection (7).
- If the person lives outside Ontario, disclose that 3. information to a child protection or child placement agency that is recognized in the jurisdiction where the person lives, or to an individual in that jurisdiction who, in the Registrar's opinion, is qualified to provide counselling.
- Refer the person's request to a society or licensee 4. that has the relevant information.
- (6) When the Registrar discloses information under subsec- Counselling tion (5), he or she shall also ensure that counselling is made available to the person receiving the information.

(7) When the Registrar forwards information to a society or Information licensee under subsection (5), the society or licensee shall dissociety or close it to the person who requested it and shall also make licensee counselling available to him or her.

(8) Subsections (4), (5), (6) and (7) also apply with necessary modifications to societies and licensees.

Societies and licensees

(9) A person who receives information under subsection (5) or (7) may disclose it to any person.

Further disclosure

ADOPTION DISCLOSURE REGISTER

158c.—(1) After an adoption order is made in Ontario, Disclosure of identifying information that relates to the adoption may be information disclosed in accordance with this section or section 158d (disclosure to protect health, safety or welfare).

(2) Each of the following persons may apply to a society or to the Registrar to be named in the register:

Who may apply to be named in register

- An adopted person who has attained the age of 1. eighteen years.
- The birth parent or birth grandparent of an adopted 2. person.

- 3. The birth sibling of an adopted person, if the birth sibling has attained the age of eighteen years.
- 4. Any other person if, in the Registrar's opinion, it is desirable that the person be named in the register as if he or she were a birth parent.

Society to forward application (3) A society that receives an application shall promptly send it to the Registrar.

Entry in register, etc.

(4) On receiving an application, the Registrar shall enter the applicant's name in the register and then make a search to determine whether the adopted person and his or her birth parent, birth grandparent or birth sibling or a person described in paragraph 4 of subsection (2) are both named in the register.

Further consents

(5) If the Registrar determines that an adopted person and his or her birth parent, birth grandparent or birth sibling or a person described in paragraph 4 of subsection (2) are both named in the register, the Registrar shall, after ensuring that each of them receives counselling, give both persons an opportunity to consent in writing to the disclosure of information in accordance with subsections (8) and (9).

Registrar to compile relevant material

- (6) If both persons give the further consent referred to in subsection (5), the Registrar shall compile the material described in paragraphs 1, 2 and 3:
 - 1. All relevant identifying information from the records of the Ministry and of societies and licensees.
 - 2. If the adopted person requests it, copies of the documents referred to in subsection 156 (2) (court file).
 - 3. If the adopted person requests it, an extract of information from his or her original birth registration kept by the Registrar General under the Vital Statistics Act.

R.S.O. 1980, c. 524

Idem

(7) The compiled material shall include only information that pertains to the adopted person or the other person named in the register and shall not include a copy of the adopted person's original birth registration.

Disclosure by Registrar (8) The Registrar shall ensure that the compiled material is promptly disclosed to the adopted person and also to the other person named in the register, separately and in accordance with one or more of the methods described in subsection (9).

(9) The Registrar may,

Idem

- (a) make the compiled material available to the adopted person or the other person named in the register, or to both, first ensuring that each person to whom the material is made available receives counselling:
- forward the compiled material to a society that he or she considers appropriate to undertake disclosure to the adopted person or the other person named in the register, or to both;
- if the adopted person or the other person named in the register lives outside Ontario, forward the compiled material to a child protection or child placement agency that is recognized in the jurisdiction where the person lives, or to an individual in that jurisdiction, but only if the Registrar is satisfied that the person will receive appropriate counselling.
- (10) If a person whose further consent to disclosure would Exception: be required is named in the register but has died, cannot be found despite a discreet and reasonable search that has continued for at least six months, or appears to lack capacity as defined in clause 4 (1) (a), the Registrar may disclose information to the other person named in the register in accordance with subsection (9) without the first-named person's further consent.

(11) A society that receives compiled material under clause (9) (b) shall promptly make it available to the adopted person or the other person named in the register, or both, as the case may be, first ensuring that each person to whom the material is made available receives counselling.

Duty of

(12) If the society's records contain identifying information Additional that pertains to the adopted person or the other person named in the register and that is not included in the compiled material, the society shall disclose the information in the same manner as the compiled material.

information

(13) A society shall provide counselling to persons who receive identifying information from the society, and shall make counselling available to persons who are named or may wish to be named in the register or who are concerned that they may be affected by the disclosure of identifying information.

Duty of

Further disclosure

(14) A person who is named in the register and receives information under subsection (9), (10), (11) or (12) may disclose it to any person.

DISCLOSURE TO PROTECT HEALTH, SAFETY OR WELFARE

Disclosure to protect health, safety or welfare **158d.**—(1) The Registrar may disclose identifying or non-identifying information that relates to an adoption to any person if, in the Registrar's opinion, the health, safety or welfare of that person or of any other person requires the disclosure.

Application of subs.(1)

(2) Subsection (1) applies whether the adoption order was made in Ontario or elsewhere.

Further disclosure

(3) A person who receives information under this section in the course of his or her professional or official duties may disclose it further only for the purpose of protecting a person's health, safety or welfare.

Idem

(4) A person who receives information under this section otherwise than as described in subsection (3) may disclose it to any person.

SEARCHES

Request for search by Registrar **158e.**—(1) An adopted person who has attained the age of eighteen years may ask the Registrar to search on his or her behalf for a specific person in one of the following categories:

- 1. A person whose consent to the adoption was required under clause 131 (2) (a) or a predecessor of that provision and was given or was dispensed with.
- 2. A person who has acknowledged that he is the adopted person's biological father.
- 3. A parent of a person described in paragraph 1 or 2.
- 4. A birth sibling of the adopted person who has also attained the age of eighteen years.

Idem, member of prescribed class (2) A person who is a member of a prescribed class may ask the Registrar to search on his or her behalf for a specific adopted person who has attained the age of eighteen years.

Duty of Registrar

(3) The Registrar shall have a discreet and reasonable search made for the person mentioned in the request, and

shall seek to ascertain whether that person wishes to be named in the register.

(4) If the Registrar discovers that the person mentioned in Exception re the request has died or appears to lack capacity as defined in clause 4 (1) (a), or if the person cannot be found despite a discreet and reasonable search that has continued for at least six months, the Registrar may disclose information to the person who made the request, in accordance with section 158c, as if both persons were named in the register.

PERSONS ADOPTED OUTSIDE ONTARIO

158f.—(1) In this section,

Definitions

- "adopted person" means a person who was adopted outside Ontario:
- "birth parent" means an adopted person's biological mother or father, or a person whose consent to another person's adoption was given or dispensed with;
- "birth grandparent" means any parent of a birth parent;
- "birth sibling" means a child of the same birth parent as an adopted person, and includes the birth parent's adopted child and a person whom the birth parent has demonstrated a settled intention to treat as a child of his or her family;
- "out of province adoption" means an adoption where the adoption order was made outside Ontario.
- (2) Each of the following persons may make a request to Who may the Registrar for non-identifying information that relates to an nonout of province adoption:

identifying information

- The adopted person, if he or she has attained the age of eighteen years or has the written consent of an adoptive parent.
- 2. An adoptive parent.
- 3. A birth parent or birth grandparent.
- A birth sibling who has attained the age of eighteen 4. vears.
- Any other person if, in the opinion of the Registrar 5. or local director, it is desirable that the person

receive non-identifying information as if he or she were a birth parent.

Disclosure of information

(3) When a person makes a request under subsection (2), the Registrar shall disclose to the person all the relevant non-identifying information in the Ministry's possession that relates to the adoption.

Counselling

(4) When the Registrar discloses information under subsection (3), he or she shall also ensure that counselling is made available to the person receiving the information, to the extent that it is feasible to do so.

Societies and licensees (5) Subsections (2), (3) and (4) also apply with necessary modifications to societies and licensees.

Disclosure of identifying information to agency outside Ontario (6) If identifying information that relates to an out of province adoption is kept by the Ministry or by a society, the Registrar may provide the information to a child protection or child placement agency that is recognized in another jurisdiction, for disclosure in accordance with the laws of that jurisdiction.

Further disclosure

(7) A person who receives information under this section may disclose it to any person.

REFUSAL OF INFORMATION

Refusal to disclose nonidentifying information **158g.**—(1) The disclosure of non-identifying information that a person would otherwise be entitled to receive under section 158b or 158f may be refused,

- (a) by the Registrar if, in his or her opinion, the disclosure might result in serious physical or emotional harm to any person;
- (b) by a society if, in the local director's opinion, the disclosure might result in serious physical or emotional harm to any person;
- (c) by a licensee if, in the Registrar's opinion, the disclosure might result in serious physical or emotional harm to any person.

Refusal to disclose identifying information (2) The disclosure of identifying information that a person would otherwise be entitled to receive under section 158c may be refused by the Registrar or by a society if, in the Registrar's opinion, the disclosure might result in serious physical or emotional harm to any person.

(3) When the disclosure of information is refused under this Notice of section, the Registrar or local director, as the case may be, shall promptly give the person seeking the information notice of the refusal, the reason for it and the person's right to a review under section 158h

REVIEW

158h.—(1) A person who is refused information in Review by accordance with section 158g may, within twenty days of receiving notice of the decision, request that the Board review Services the matter.

Review Board

(2) The Board shall conduct a review with respect to the Duty of request, following the prescribed procedures.

Board

- (3) Unless the parties to a review agree otherwise, the Hearings Board shall hold a hearing.
 - (4) The parties to a review are,

Parties

- (a) the person who requested the review;
- (b) the person who gave notice of the decision to withhold the information.
- (5) At any stage in a review, the Board shall add the Regis-Registrar trar as a party on his or her request.

to be added

(6) The Board may examine the information without dis- Information closing it to the person who requested the review.

need not be disclosed in course of review

(7) The Board may receive any evidence and submissions Idem, without disclosing them to the person who requested the and review, and when the Board holds a hearing it may hear any submissions part of the evidence and submissions in that person's absence.

evidence

(8) When the Board acts under subsection (6) or (7), the Lawyer or lawyer or agent of the person who requested the review is nevertheless entitled to examine the information and to be excluded present, to cross-examine witnesses and to make submissions, or to examine the evidence and submissions and respond to them, as the case may be, on condition that the lawyer or agent undertakes not to reveal the information, evidence and submissions to his or her client.

(9) The Board shall complete its review and make a deci- Time for sion within ninety days of receiving notice of the request, unless the parties consent to a longer period.

Board's decision

(10) After conducting a review, the Board may make an order requiring the Registrar, society or licensee, as the case may be, to disclose all or part of the information to the person, or may make an order confirming the refusal.

Conditions

(11) The Board may include conditions in its order.

Written decision with reasons

(12) Whether the Board holds a hearing or not, it shall give its decision in writing, with reasons.

INFORMATION IN COURT FILE

Application

158i.—(1) This section applies to court proceedings that relate to decisions made by the Board under section 158h or by the Registrar, local directors or licensees under sections 158a, 158b, 158c, 158d, 158e, 158f and 158g.

Examination of identifying information in court file

(2) Unless the court orders otherwise, only the court may examine identifying information that is in the court file and comes from the records of the Ministry or of a society or licensee.

Disclosure of information

(3) No person shall, without the court's permission, disclose identifying information described in subsection (2) that he or she obtained from the court file.

FEES AND EXPENSES

Fees and expenses

- **158j.** The Registrar, societies and licensees may charge the prescribed fees for services provided under clause 158a (2) (g) and sections 158b, 158c, 158e and 158f, and may charge up to the prescribed amounts for expenses incurred in providing services under sections 158b, 158c, 158e and 158f.
- **8.** Clause 159 (f) of the said Act is amended by striking out "adopting" in the second line and inserting in lieu thereof "adoptive".
- **9.** Clause 163 (2) (d) of the said Act is repealed and the following substituted therefor:
 - (d) in the adoption disclosure register maintained under clause 157 (2) (a) of Part VII.
- 10.—(1) The title preceding section 190 of the said Act is repealed and the following substituted therefor:

CHILD AND FAMILY SERVICES REVIEW BOARD

- (2) Subsection 190 (1) of the said Act is repealed and the following substituted therefor:
- (1) The Board known as the "Children's Services Review Child and Board" is continued under the name "Child and Family Services Review Board".

Services Review Board

(1a) The Board is composed of the prescribed number of Idem members appointed by the Lieutenant Governor in Council and has the powers and duties given to it by this Act and the regulations.

11.—(1) Clause 203 (e) of the said Act is repealed and the following substituted therefor:

- (e) further defining "identifying information" and "non-identifying information" for the purposes of sections 157 to 158i;
- (ea) prescribing classes of persons for the purposes of paragraph 5 of subsection 158b (4) (persons who may request non-identifying information);
- (eb) prescribing classes of persons for the purposes of subsection 158e (2) (search by Registrar);
- (ec) prescribing additional powers, duties and procedures for the Board under section 158h:
- (ed) prescribing fees and amounts for the purposes of section 158j.
- (2) Section 203 of the said Act is amended by adding thereto the following subsection:
- (2) Regulations made under clause (1) (ed) may prescribe Idem different fees and amounts for the Registrar, for societies and for licensees.
- **12.** Clause 1 (c) of the *Day Nurseries Act*, being chapter 111 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1984, chapter 55, section 215, is repealed and the following substituted therefor:
 - "Board" means the Child and Family Services Review Board continued under Part IX (Licensing) of the Child and Family Services Act, 1984.

13.—(1) The *Vital Statistics Act*, being chapter 524 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

Extract of information to be provided to Registrar of Adoption Information 1984, c. 55

- **24a.** Although an adopted person's original birth registration has been sealed pursuant to subsection 24 (2), the Registrar General shall, at the request of the Registrar of Adoption Information appointed under the *Child and Family Services Act*, 1984, provide the Registrar with the prescribed information from the original birth registration.
- (2) Section 55 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 9, section 17, is further amended by adding thereto the following clause:
 - (v) prescribing information for the purposes of section 24a (extract of information to be provided to Registrar of Adoption Information).

Commencement 14. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

15. The short title of this Act is the Adoption Disclosure Statute Law Amendment Act, 1987.

Bill 165

(Chapter 4 Statutes of Ontario, 1987)

An Act to amend the Child and Family Services Act, 1984 and certain other Acts in relation to Adoption Disclosure

The Hon. J. Sweeney

Minister of Community and Social Services

1st Reading

December 1st, 1986

2nd Reading

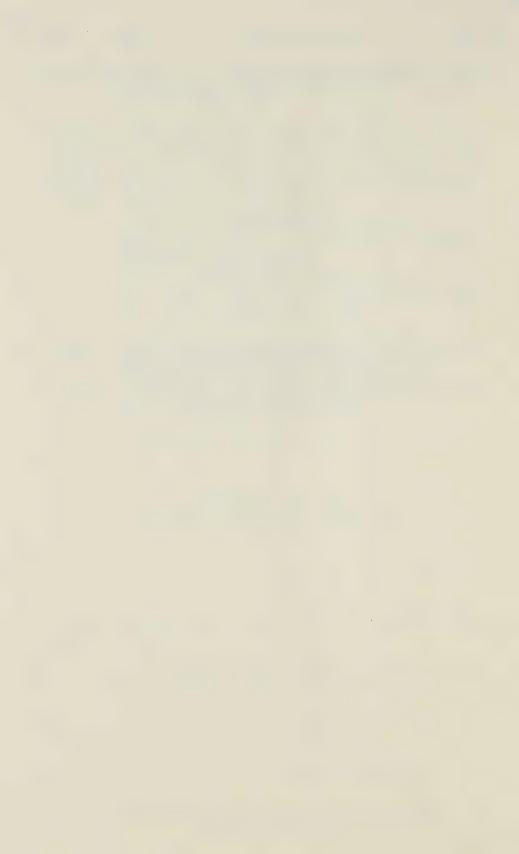
January 13th, 1987

3rd Reading

January 26th, 1987

Royal Assent

February 3rd, 1987



Bill 165 1987

An Act to amend the Child and Family Services Act, 1984 and certain other Acts in relation to Adoption Disclosure

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1. Paragraph 5 of subsection 3 (1) of the *Child and Family Services Act*, 1984, being chapter 55, is repealed and the following substituted therefor:
 - 5. "Board" means the Child and Family Services Review Board continued under Part IX (Licensing).
 - 2. Clause 130 (1) (a) of the said Act is repealed.
- **3.** Subclause 131 (4) (a) (iii) of the said Act is repealed and the following substituted therefor:
 - (iii) to obtain non-identifying information under section 158b and to participate in the adoption disclosure register maintained under clause 157 (2) (a).
- **4.** Clause 146 (2) (b) of the said Act is amended by striking out "adopting" in the second line and inserting in lieu thereof "adoptive".
- 5.—(1) Subsection 152 (2) of the said Act is amended by striking out "adopting" wherever it occurs and inserting in lieu thereof in each instance "adoptive".
- (2) Subsection 152 (3) of the said Act is amended by striking out "adopting" in the second line and in the third line and inserting in lieu thereof in each instance "adoptive".
- **6.** Section 154 of the said Act is amended by adding thereto the following subsection:

Definition

- (2) In this section, "birth parent" has the same meaning as in section 158b.
 - 7. Sections 155, 156, 157 and 158 of the said Act are repealed and the following substituted therefor:

Parent to be informed on request **155.** At the request of a person whose consent to an adoption was required under clause 131 (2) (a) or a predecessor of that provision and was given or was dispensed with, any society or the licensee that placed the child for adoption shall inform the person whether an order has been made for the child's adoption.

Definition

156.—(1) In this section, "court" includes the District Court.

Papers to be sealed up (2) Subject to subsections (3) and 158c (6), the documents used upon an application for an adoption order under this Part or a predecessor of this Part shall be sealed up together with a certified copy of the original order and filed in the office of the court by the proper officer of the court, and shall not be open for inspection except upon an order of the court or the written direction of the Registrar of Adoption Information appointed under subsection 157 (1).

Transmission of order

- (3) Within thirty days after an adoption order is made under this Part, the proper officer of the court shall cause a sufficient number of certified copies of it to be made, under the seal of the proper certifying authority, and shall transmit,
 - (a) the original order to the adoptive parent;
 - (b) one certified copy to the Registrar of Adoption Information;

R.S.O. 1980, c. 524 (c) one certified copy to the Registrar General under the *Vital Statistics Act*, or, if the adopted child was born outside Ontario, two certified copies;

R.S.C. 1970, c. I-6 (d) if the adopted child is an Indian, one certified copy to the Registrar under the *Indian Act* (Canada).

REGISTRAR OF ADOPTION INFORMATION

Registrar of Adoption Information **157.**—(1) The Minister may appoint an employee of the Ministry as Registrar of Adoption Information for the purposes of this section and sections 158 to 158j.

Duties of Registrar (2) The Registrar shall,

Bill 165

- (a) maintain a register for the purposes of section 158c;
- (b) ensure that counselling is provided to persons who receive identifying information from the Registrar;
- ensure that counselling is made available to persons who receive non-identifying information from the Registrar, who are or may wish to be named in the register, or who are concerned that they may be affected by the disclosure of identifying information:
- (d) have searches conducted in accordance with subsection 158e (3).
- (3) The Registrar may, in writing, authorize other employ- Delegation of Registrar's ees of the Ministry to exercise any or all of the Registrar's powers and powers and perform any or all of the Registrar's duties.

(4) The counselling referred to in this section and in sec- Counselling tions 158b (disclosure of non-identifying information), 158c (adoption disclosure register) and 158f (persons adopted outside Ontario) shall be provided by persons who are, in the opinion of the Registrar or a local director, qualified to do so.

158. Sections 158a to 158j apply whether the adoption Application order was made before or after section 7 of the Adoption Disof sections
158a to 158i closure Statute Law Amendment Act, 1987 comes into force.

1987, c. 4

CONFIDENTIALITY OF ADOPTION RECORDS

158a.—(1) Despite any other Act, after an adoption order Adoption information is made, no person shall inspect, remove, alter or permit the confidential inspection, removal or alteration of information that relates to the adoption and is kept,

- (a) by the Ministry;
- (b) by a society or licensee; or
- (c) in the adoption disclosure register maintained under clause 157 (2) (a),

or disclose or permit the disclosure of such information that the person obtained from the records of the Ministry, including the register, or from the records of a society or licensee.

(2) Subsection (1) does not apply to,

- (a) the disclosure of information by a person who obtained it before the adoption order was made, if the information was obtained in accordance with this Act and the regulations or with the consent of the person to whom the information relates;
- (b) the disclosure of non-identifying information in accordance with section 158b or 158f (persons adopted outside Ontario);
- (c) the disclosure of identifying information in accordance with section 158c (adoption disclosure register) or 158f;
- (d) the disclosure of identifying or non-identifying information in accordance with section 158d (disclosure to protect health, safety or welfare);
- (e) the disclosure of information in accordance with an order of the Board under subsection 158h (10);
- (f) the routine maintenance and updating of records by the Ministry or a society or licensee;
- (g) the release by the Registrar of Adoption Information of a copy of an adoption order to,
 - (i) the adoptive parent,
 - (ii) the adopted person or any other person if, in the Registrar's opinion, it is desirable that he or she receive a copy of the adoption order, or
 - (iii) a governmental authority that requires the copy to issue a birth certificate, passport or visa;
- (h) the inspection, by a person named in subsection (3), of information kept by the Ministry or a society or licensee, or the disclosure of such information to such a person;
- (i) the disclosure of information to a person who is engaged in research, in accordance with subsection (4).
- (3) Clause (2) (h) applies in respect of:
 - 1. The Minister.

Persons entitled to share information

- 2. The Registrar of Adoption Information.
- 3. A Director, or an employee of the Ministry who has a Director's written authority.
- 4. A local director, or an employee of a society who has the local director's written authority.
- A licensee who is an individual, a director of a 5. licensee that is a corporation, or an employee of a licensee who has the licensee's written authority.
- A child protection or child placement agency that is recognized in another jurisdiction.
- (4) A person who is engaged in research may, with the writ-Research ten approval of the Registrar of Adoption Information or, in the case of information kept by a society, with the local director's written approval, inspect and use information that relates to adoptions, but shall not,

- (a) use or communicate the information for any purpose except research, academic pursuits or the compilation of statistical data; or
- (b) communicate any identifying information.
- (5) The Freedom of Information and Protection of Privacy application of Act, 1987 does not apply to information that relates to an adoption. 1987, c. ...
- (6) Subsection (5) does not come into force until a day to Coming into force be named by proclamation of the Lieutenant Governor. of subs. (5)

DISCLOSURE OF NON-IDENTIFYING INFORMATION

158b.—(1) In this section and in sections 158c to 158j, Definition "Registrar" means the Registrar of Adoption Information appointed under subsection 157 (1).

- (2) In this section and in sections 157, 158a and 158c to Idem 158i,
- "identifying information" means information whose disclosure, alone or in combination with other information, will in the circumstances reveal the identity of the person to whom it relates;
- "non-identifying information" means information that is not identifying information.

Idem

- (3) In this section and in sections 158c, 158d and 158e,
- "adopted person" means a person who was adopted in Ontario;
- "birth grandparent" means any parent of a birth parent;
- "birth parent" means an adopted person's biological mother or father, and includes a person whose consent to another person's adoption was required under clause 131 (2) (a) or a predecessor of that provision and was given or was dispensed with;
- "birth sibling" means a child of the same birth parent as an adopted person, and includes the birth parent's adopted child and a person whom the birth parent has demonstrated a settled intention to treat as a child of his or her family;
- "register" means the register maintained under clause 157 (2) (a).

Who may request information

- (4) Each of the following persons may make a request to the Registrar for non-identifying information that relates to an adoption:
 - 1. The adopted person, if he or she has attained the age of eighteen years or has the written consent of an adoptive parent.
 - 2. An adoptive parent.
 - 3. A birth parent or birth grandparent.
 - 4. A birth sibling who has attained the age of eighteen years.
 - 5. A person who is a member of a prescribed class, if the person has the written consent of the adopted person and the adopted person would be entitled to make the request or, if not, the written consent of an adoptive parent.
 - 6. Any other person if, in the Registrar's opinion, it is desirable that the person be able to request non-identifying information as if he or she were a birth parent.

Disclosure of information

(5) When a person makes a request under subsection (4), the Registrar shall do one of the following:

- 1. Disclose to the person all the relevant non-identifying information in the Ministry's possession that relates to the adoption.
- Forward that information to a society or licensee for 2. disclosure to the person in accordance with subsection (7).
- 3. If the person lives outside Ontario, disclose that information to a child protection or child placement agency that is recognized in the jurisdiction where the person lives, or to an individual in that jurisdiction who, in the Registrar's opinion, is qualified to provide counselling.
- Refer the person's request to a society or licensee 4. that has the relevant information.
- (6) When the Registrar discloses information under subsec- Counselling tion (5), he or she shall also ensure that counselling is made available to the person receiving the information.

(7) When the Registrar forwards information to a society or Information licensee under subsection (5), the society or licensee shall dis-torwarded society or close it to the person who requested it and shall also make licensee counselling available to him or her.

(8) Subsections (4), (5), (6) and (7) also apply with neces-Societies sary modifications to societies and licensees.

and licensees

Further (9) A person who receives information under subsection (5) or (7) may disclose it to any person.

ADOPTION DISCLOSURE REGISTER

158c.—(1) After an adoption order is made in Ontario, Disclosure of identifying information that relates to the adoption may be information disclosed in accordance with this section or section 158d (disclosure to protect health, safety or welfare).

(2) Each of the following persons may apply to a society or Who may to the Registrar to be named in the register:

apply to be named in register

- An adopted person who has attained the age of 1. eighteen years.
- 2. The birth parent or birth grandparent of an adopted person.

- 3. The birth sibling of an adopted person, if the birth sibling has attained the age of eighteen years.
- 4. Any other person if, in the Registrar's opinion, it is desirable that the person be named in the register as if he or she were a birth parent.

Society to forward application (3) A society that receives an application shall promptly send it to the Registrar.

Entry in register, etc.

(4) On receiving an application, the Registrar shall enter the applicant's name in the register and then make a search to determine whether the adopted person and his or her birth parent, birth grandparent or birth sibling or a person described in paragraph 4 of subsection (2) are both named in the register.

Further consents

(5) If the Registrar determines that an adopted person and his or her birth parent, birth grandparent or birth sibling or a person described in paragraph 4 of subsection (2) are both named in the register, the Registrar shall, after ensuring that each of them receives counselling, give both persons an opportunity to consent in writing to the disclosure of information in accordance with subsections (8) and (9).

Registrar to compile relevant material

- (6) If both persons give the further consent referred to in subsection (5), the Registrar shall compile the material described in paragraphs 1, 2 and 3:
 - 1. All relevant identifying information from the records of the Ministry and of societies and licensees.
 - 2. If the adopted person requests it, copies of the documents referred to in subsection 156 (2) (court file).
 - 3. If the adopted person requests it, an extract of information from his or her original birth registration kept by the Registrar General under the *Vital Statistics Act*.

R.S.O. 1980, c. 524

c. 524

Idem

(7) The compiled material shall include only information that pertains to the adopted person or the other person named in the register and shall not include a copy of the adopted person's original birth registration.

Disclosure by Registrar (8) The Registrar shall ensure that the compiled material is promptly disclosed to the adopted person and also to the other person named in the register, separately and in accordance with one or more of the methods described in subsection (9).

(9) The Registrar may,

Idem

- make the compiled material available to the adopted person or the other person named in the register, or to both, first ensuring that each person to whom the material is made available receives counselling:
- forward the compiled material to a society that he or she considers appropriate to undertake disclosure to the adopted person or the other person named in the register, or to both;
- (c) if the adopted person or the other person named in the register lives outside Ontario, forward the compiled material to a child protection or child placement agency that is recognized in the jurisdiction where the person lives, or to an individual in that jurisdiction, but only if the Registrar is satisfied that the person will receive appropriate counselling.
- (10) If a person whose further consent to disclosure would Exception: be required is named in the register but has died, cannot be consent found despite a discreet and reasonable search that has continued for at least six months, or appears to lack capacity as defined in clause 4 (1) (a), the Registrar may disclose information to the other person named in the register in accordance with subsection (9) without the first-named person's further consent.

(11) A society that receives compiled material under clause (9) (b) shall promptly make it available to the adopted person or the other person named in the register, or both, as the case may be, first ensuring that each person to whom the material is made available receives counselling.

Duty of

(12) If the society's records contain identifying information that pertains to the adopted person or the other person named in the register and that is not included in the compiled material, the society shall disclose the information in the same manner as the compiled material.

Additional information

(13) A society shall provide counselling to persons who receive identifying information from the society, and shall make counselling available to persons who are named or may wish to be named in the register or who are concerned that they may be affected by the disclosure of identifying information.

Duty of society

Further disclosure

(14) A person who is named in the register and receives information under subsection (9), (10), (11) or (12) may disclose it to any person.

DISCLOSURE TO PROTECT HEALTH, SAFETY OR WELFARE

Disclosure to protect health, safety or welfare **158d.**—(1) The Registrar may disclose identifying or non-identifying information that relates to an adoption to any person if, in the Registrar's opinion, the health, safety or welfare of that person or of any other person requires the disclosure.

Application of subs.(1)

(2) Subsection (1) applies whether the adoption order was made in Ontario or elsewhere.

Further disclosure (3) A person who receives information under this section in the course of his or her professional or official duties may disclose it further only for the purpose of protecting a person's health, safety or welfare.

Idem

(4) A person who receives information under this section otherwise than as described in subsection (3) may disclose it to any person.

SEARCHES

Request for search by Registrar **158e.**—(1) An adopted person who has attained the age of eighteen years may ask the Registrar to search on his or her behalf for a specific person in one of the following categories:

- 1. A person whose consent to the adoption was required under clause 131 (2) (a) or a predecessor of that provision and was given or was dispensed with.
- 2. A person who has acknowledged that he is the adopted person's biological father.
- 3. A parent of a person described in paragraph 1 or 2.
- 4. A birth sibling of the adopted person who has also attained the age of eighteen years.

Idem, member of prescribed class (2) A person who is a member of a prescribed class may ask the Registrar to search on his or her behalf for a specific adopted person who has attained the age of eighteen years.

Duty of Registrar (3) The Registrar shall have a discreet and reasonable search made for the person mentioned in the request, and

shall seek to ascertain whether that person wishes to be named in the register.

(4) If the Registrar discovers that the person mentioned in Exception re the request has died or appears to lack capacity as defined in clause 4 (1) (a), or if the person cannot be found despite a discreet and reasonable search that has continued for at least six months, the Registrar may disclose information to the person who made the request, in accordance with section 158c, as if both persons were named in the register.

PERSONS ADOPTED OUTSIDE ONTARIO

158f.—(1) In this section,

Definitions

- "adopted person" means a person who was adopted outside Ontario:
- "birth parent" means an adopted person's biological mother or father, or a person whose consent to another person's adoption was given or dispensed with;
- "birth grandparent" means any parent of a birth parent;
- "birth sibling" means a child of the same birth parent as an adopted person, and includes the birth parent's adopted child and a person whom the birth parent has demonstrated a settled intention to treat as a child of his or her family;
- "out of province adoption" means an adoption where the adoption order was made outside Ontario.
- (2) Each of the following persons may make a request to Who may the Registrar for non-identifying information that relates to an out of province adoption:

request identifying information

- 1. The adopted person, if he or she has attained the age of eighteen years or has the written consent of an adoptive parent.
- 2. An adoptive parent.
- 3. A birth parent or birth grandparent.
- A birth sibling who has attained the age of eighteen 4. years.
- Any other person if, in the opinion of the Registrar 5. or local director, it is desirable that the person

receive non-identifying information as if he or she were a birth parent.

Disclosure of information

(3) When a person makes a request under subsection (2), the Registrar shall disclose to the person all the relevant non-identifying information in the Ministry's possession that relates to the adoption.

Counselling

(4) When the Registrar discloses information under subsection (3), he or she shall also ensure that counselling is made available to the person receiving the information, to the extent that it is feasible to do so.

Societies and licensees (5) Subsections (2), (3) and (4) also apply with necessary modifications to societies and licensees.

Disclosure of identifying information to agency outside Ontario (6) If identifying information that relates to an out of province adoption is kept by the Ministry or by a society, the Registrar may provide the information to a child protection or child placement agency that is recognized in another jurisdiction, for disclosure in accordance with the laws of that jurisdiction.

Further disclosure

(7) A person who receives information under this section may disclose it to any person.

REFUSAL OF INFORMATION

Refusal to disclose nonidentifying information

- **158g.**—(1) The disclosure of non-identifying information that a person would otherwise be entitled to receive under section 158b or 158f may be refused,
 - (a) by the Registrar if, in his or her opinion, the disclosure might result in serious physical or emotional harm to any person;
 - (b) by a society if, in the local director's opinion, the disclosure might result in serious physical or emotional harm to any person;
 - (c) by a licensee if, in the Registrar's opinion, the disclosure might result in serious physical or emotional harm to any person.

Refusal to disclose identifying information (2) The disclosure of identifying information that a person would otherwise be entitled to receive under section 158c may be refused by the Registrar or by a society if, in the Registrar's opinion, the disclosure might result in serious physical or emotional harm to any person.

(3) When the disclosure of information is refused under this Notice of section, the Registrar or local director, as the case may be, shall promptly give the person seeking the information notice of the refusal, the reason for it and the person's right to a review under section 158h.

ADOPTION DISCLOSURE

REVIEW

158h.—(1) A person who is refused information in accordance with section 158g may, within twenty days of receiving notice of the decision, request that the Board review the matter.

Review by Family Services Review Board

- Duty of (2) The Board shall conduct a review with respect to the request, following the prescribed procedures.
- (3) Unless the parties to a review agree otherwise, the Hearings Board shall hold a hearing.
 - (4) The parties to a review are,

Parties

Roard

- (a) the person who requested the review;
- (b) the person who gave notice of the decision to withhold the information.
- (5) At any stage in a review, the Board shall add the Regis-Registrar trar as a party on his or her request.

to be added

(6) The Board may examine the information without dis- Information closing it to the person who requested the review.

need not be disclosed in course of review

(7) The Board may receive any evidence and submissions without disclosing them to the person who requested the review, and when the Board holds a hearing it may hear any submissions part of the evidence and submissions in that person's absence.

Idem.

(8) When the Board acts under subsection (6) or (7), the Lawyer or lawyer or agent of the person who requested the review is to be nevertheless entitled to examine the information and to be excluded present, to cross-examine witnesses and to make submissions, or to examine the evidence and submissions and respond to them, as the case may be, on condition that the lawyer or agent undertakes not to reveal the information, evidence and submissions to his or her client.

(9) The Board shall complete its review and make a deci- Time for sion within ninety days of receiving notice of the request, unless the parties consent to a longer period.

Board's decision

(10) After conducting a review, the Board may make an order requiring the Registrar, society or licensee, as the case may be, to disclose all or part of the information to the person, or may make an order confirming the refusal.

Conditions

(11) The Board may include conditions in its order.

Written decision with reasons

(12) Whether the Board holds a hearing or not, it shall give its decision in writing, with reasons.

INFORMATION IN COURT FILE

Application

158i.—(1) This section applies to court proceedings that relate to decisions made by the Board under section 158h or by the Registrar, local directors or licensees under sections 158a, 158b, 158c, 158d, 158e, 158f and 158g.

Examination of identifying information in court file

(2) Unless the court orders otherwise, only the court may examine identifying information that is in the court file and comes from the records of the Ministry or of a society or licensee.

Disclosure of information

(3) No person shall, without the court's permission, disclose identifying information described in subsection (2) that he or she obtained from the court file.

FEES AND EXPENSES

Fees and expenses

- **158j.** The Registrar, societies and licensees may charge the prescribed fees for services provided under clause 158a (2) (g) and sections 158b, 158c, 158e and 158f, and may charge up to the prescribed amounts for expenses incurred in providing services under sections 158b, 158c, 158e and 158f.
- **8.** Clause 159 (f) of the said Act is amended by striking out "adopting" in the second line and inserting in lieu thereof "adoptive".
- **9.** Clause 163 (2) (d) of the said Act is repealed and the following substituted therefor:
 - (d) in the adoption disclosure register maintained under clause 157 (2) (a) of Part VII.
- **10.**—(1) The title preceding section 190 of the said Act is repealed and the following substituted therefor:

Bill 165

CHILD AND FAMILY SERVICES REVIEW BOARD

- (2) Subsection 190 (1) of the said Act is repealed and the following substituted therefor:
- (1) The Board known as the "Children's Services Review Child and Board" is continued under the name "Child and Family Ser-Services vices Review Board".

Review Board

(1a) The Board is composed of the prescribed number of Idem members appointed by the Lieutenant Governor in Council and has the powers and duties given to it by this Act and the regulations.

- 11.—(1) Clause 203 (e) of the said Act is repealed and the following substituted therefor:
 - (e) further defining "identifying information" and "non-identifying information" for the purposes of sections 157 to 158j;
 - (ea) prescribing classes of persons for the purposes of paragraph 5 of subsection 158b (4) (persons who may request non-identifying information);
 - (eb) prescribing classes of persons for the purposes of subsection 158e (2) (search by Registrar);
 - (ec) prescribing additional powers, duties and procedures for the Board under section 158h:
 - (ed) prescribing fees and amounts for the purposes of section 158j.
- (2) Section 203 of the said Act is amended by adding thereto the following subsection:
- (2) Regulations made under clause (1) (ed) may prescribe Idem different fees and amounts for the Registrar, for societies and for licensees.
- **12.** Clause 1 (c) of the *Day Nurseries Act*, being chapter 111 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1984, chapter 55, section 215, is repealed and the following substituted therefor:
 - (c) "Board" means the Child and Family Services Review Board continued under Part IX (Licensing) of the Child and Family Services Act, 1984.

13.—(1) The *Vital Statistics Act*, being chapter 524 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

Extract of information to be provided to Registrar of Adoption Information 1984, c. 55

- **24a.** Although an adopted person's original birth registration has been sealed pursuant to subsection 24 (2), the Registrar General shall, at the request of the Registrar of Adoption Information appointed under the *Child and Family Services Act*, 1984, provide the Registrar with the prescribed information from the original birth registration.
- (2) Section 55 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 9, section 17, is further amended by adding thereto the following clause:
 - (v) prescribing information for the purposes of section 24a (extract of information to be provided to Registrar of Adoption Information).

Commencement **14.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

15. The short title of this Act is the Adoption Disclosure Statute Law Amendment Act, 1987.









